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THE

SPEECHES

OF

THE RIGHT HONOURABLE

EDMUND BURKE,

IN

THE HOUSE OF COMMONS,

AND IN

WESTMINSTER-HALL.

27094

IN FOUR VOLUMES.

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SPEECHES

OF THE

RIGHT HONOURABLE

EDMUND BURKE,

&c. &c.

QUEBEC GOVERNMENT BILL — FRENCH REVOLUTION — SEPARATION BETWEEN MR. BURKE AND MR. FOX.

April 21. 1791.

ON the 4th of March 1791, Mr. Pitt obtained leave to bring in a bill to repeal certain parts of the act of the 14th of his present majesty, intituled "An act for making more effectual provision for the government of the province of Quebec in North America," and to make further provision for the government of the said province. On the 8th of April, upon a motion made by Mr. Hussey, that the bill be recommitted, Mr. Fox expressed his hope, that in promulgating the scheme of a new constitution for the province of Quebec, the House would keep in view those enlightened principles of freedom, which had already made a rapid progress over a considerable portion of the globe, and were every day hastening more and more to become universal. As the love of liberty was gaining ground, in consequence of the diffusion of literature and knowledge through the world, he thought that a constitution should be formed for Canada as consistent as possible with the genuine principles of freedom. This bill, in his opinion, would not establish such a government, and that was his chief reason for opposing it. Mr. Burke was not in the House during Mr. Fox's speech. On the 15th of April a debate

took place upon a motion made by Mr. Baker relative to the war with Russia, in the course of which Mr. Fox took occasion to enter into a comparison of the present state of France with its former condition, both as it respected the politics of Europe, and the happiness of the people, for the purpose of shewing that those who detested the principles of the revolution in that country had reason to rejoice in its effects. He praised the new government of France, in its internal relation, as good because it aimed to make those who were subject to it happy. With regard to the change of system that had taken place in that country, Mr. Fox said, that he knew different opinions were entertained upon the point by different men, and added, that he for one admired the new constitution of France, considered altogether as the most stupendous and glorious edifice of liberty, which had been erected on the foundation of human integrity in any time or country *. As soon as Mr. Fox sat down, Mr. Burke rose, in much visible emotion, but the cry of "Question!" being general, he unwillingly gave way to the division, which immediately after took place. Mr. Fox is known to have regretted the injudicious zeal of those who would not suffer Mr. Burke to answer him on the spot. The contention, he said, might have been fiercer and hotter, but the remembrance of it would not have settled so deep, nor rankled so long in the heart.

From the moment of the debate on the 15th of April on Mr. Baker's motion relative to the war with Russia, a rupture between Mr. Burke and Mr. Fox was distinctly foreseen. On the morning of the 21st of April, the day appointed for the re-commitment of the Quebec bill, Mr. Fox, for the last time, paid Mr. Burke a visit, accompanied by a common friend. Mr. Burke talked over with them the plan of all which he intended to say, opened the different branches of his argument, and explained the limitations which he meant to impose on himself. Mr. Fox, on his part, treated him with confidence, and mentioned to him a political circumstance of some delicacy. What it precisely was, Mr. Burke declined telling, even in the heat of altercation. But from the tenor of the charge, which he seems

* See Appeal from the New to the Old Whigs, Burke's Works, Vol. VI. p. 93.

most anxious to refute, and from some intimations in one of Mr. Fox's answers, we may form a reasonable conjecture. The king, it seems, was represented to have used some expressions favourable to Mr. Fox. In order, therefore, to secure himself in his situation, the minister was asserted to have given out the watch-word, that Mr. Fox was by principle a republican; and it was supposed that, in pursuance of this plan, he instigated Mr. Burke to the discussion. Mr. Burke undeceived his friend, by relating the fact as it was. Still it was requested by Mr. Fox, that at least the discussion might not take place on the re-commitment of the Quebec bill; but, Mr. Burke was unwilling to forego an opportunity which he could not hope to find again in any other business then before parliament, or likely to come before it. They walked however to Westminster together, and together entered the House, where they found that Mr. Sheridan, in the mean time, had moved to postpone the re-commitment till after the holidays. Mr. M. A. Taylor observed, that the business had been improperly treated, as involving the consideration of general principles of government, and the constitutions of other countries; on which ground insinuations had been thrown out against some members of the opposition party. But he gave notice, that if the minister, or any other right honourable gentleman, should wander from the proper discussion of the subject, he should call him to order, and take the sense of the House upon the occasion. Here was a palpable allusion to Mr. Burke. Yet he did not rise to answer. Mr. Fox took the opportunity of explaining what he had said on the former question relative to the Quebec bill. After lamenting that he had been misunderstood before, he admitted, that in forming a government for a colony, some attention must be paid to the general principles of all governments. In the course of this session, he said, he had taken opportunities of alluding, perhaps too often, to the French revolution, and to shew, whether right or wrong, that his opinion, on the whole, was much in its favour; but on this bill he had only introduced one levity, silly enough perhaps, and not worth recollection, that had any relation to the French revolution; he meant an allusion to the extinction of nobility in France, and its revival in Canada. Certainly he had spoken much on the government of the American states, because they were in the neighbourhood of Canada, and were connected with that province. Having then oberved that the prudence of

concealing his opinions was a quality which his dearest friends had not very often imputed to him, and that he thought the public had a right to the opinions of public men on public measures, he declared, that he never had stated any republican principles, with regard to this country, in or out of parliament; and among other things he said, that when the Quebec bill came again to be discussed, from the great respect which he entertained for some of his friends, he should be extremely sorry to differ from them; but he should never be backward in delivering his opinion, and he did not wish to recede from any thing which he had formerly advanced. — Mr. Powys complained that the debate had turned irregularly both on retrospect and anticipation, and hinted that Mr. Fox should have imitated the example of Mr. Burke, in writing, rather than speaking there, of the French revolution.

Mr. BURKE in a very affecting manner assured the House, that nothing depressed him more — nothing had ever more afflicted him in body and mind — than the thought of meeting his friend as an adversary and antagonist. After noticing the anticipation which had been suggested, and the observations which had been made, but for which he trusted that he had given no just cause, he declared his sentiments, that in framing a new constitution, it was necessary to refer to principles of government and examples of other constitutions, because it was a material part of every political question, to see how far such and such principles have been adopted, and how they have succeeded in other places. His opinions on government he presumed not to be unknown; and the more he considered the French constitution, the more sorry he was to see it. Once in the preceding session he had thought himself under the necessity of speaking very fully upon the subject; but since that time, he had never mentioned it either directly or indirectly; no man, therefore, could charge him with having provoked the conversation that had passed. He signified, however, his intention of giving his opinion on certain principles of government at the proper moment, in the future progress of the Quebec bill. He alluded with much candour to Mr. Fox's recent pane-

gyric on France, as well as his own ineffectual attempt to rise in answer to it; acquitting his friend from all design of personal offence in it; and he finished by saying, that should he and his friend differ, he desired it to be recollected, that however dear he considered his friendship, there was something still dearer in his mind, the love of his country: nor was he stimulated by ministers to take the part which he should take; for whatever they knew of his political sentiments, they had learned from him, not he from them.

Mr. Fox had thus openly given a challenge, which was accepted by Mr. Burke; and a determination of calling the latter to order was likewise avowed.

May 6.

When the House re-assembled on the 6th of May, they proceeded to the recommitment of the Quebec bill. The chairman took the chair, and began by putting the usual question, "That the bill be read paragraph by paragraph?" Upon this,

Mr. Burke immediately rose. He said, it might be a question whether the chairman should be directed to leave the chair, or whether the bill should be debated clause by clause. He should, therefore, speak to the general principle.* The House, by the bill, was going to do a high and important act, to appoint a legislature for a distant people, and to affirm a legal authority in itself, to exercise this high power. The first consideration then was, the competency or incompetency of the House to do such an act; for if it was not competent, the beneficence of the intention, or the goodness of the constitution they were about to give, would avail nothing. A body of rights, commonly called the Rights of Man, imported from a neighbouring country, had been lately set up by some persons in this, as paramount to all other rights. A principle article in this new code

was, "That all men are by nature free, are equal in respect of rights, and continue so in society." If such a doctrine were to be admitted, then the power of the House could extend no farther than to call together all the inhabitants of Canada, and recommend to them the free choice of a constitution for themselves. On what, then, was this House to found its competence? There was another code on which mankind in all ages had acted — the law of nations; and on this alone he conceived the competence of the House to rest. This country had acquired the power of legislating for Canada by right of conquest; and in virtue of that right, all the rights and duties of the old government had devolved on us. In the second place, came the right by the cession of the old government; and in the third, the right of possession, which we had held for about thirty years. All these, according to the law of nations, enabled us to legislate for the people of Canada, and bound us to afford them an equitable government, and them to allegiance.

Setting aside, then, the doctrine of the rights of man, which was never preached any where without mischief, the House was bound to give to the people of Canada the best government that their local situation and their connection with this country would admit. How was this to be done? He could not refer to the experience of old governments, for that was exploded by the academies of Paris and the clubs of London, who saw too much by the light of their new lantern to have recourse to any other. The great examples to be considered, were the constitutions of America, of France, and of Great Britain. To that of America great attention, no doubt, was due, because it was of importance that the people of Canada should have nothing to envy in the constitution of a country so near to their own. Situation and circumstances were first to be considered.

Et mihi res, non me rebus, subjungere conor.

They were not to imitate the examples of countries that had disregarded circumstances, torn asunder the bonds of

society, and even the ties of nature. In the local situation, was there any thing to give a preference to the American constitution, or in the habits of the people? Part of the province was inhabited chiefly by persons who had migrated from the United States. These men had fled from the blessings of American government, and there was no danger of their going back. There might be many causes of emigration not connected with government, such as a more fertile soil, or more genial climate; but they had forsaken all the advantages of a more fertile soil, and more southern latitude, for the bleak and barren regions of Canada. There was no danger of their being so much shocked by the introduction of the British constitution, as to return.

The people of America had, he believed, formed a constitution as well adapted to their circumstances as they could. But, compared with the French, they had a certain quantity of phlegm, of old English good nature, that fitted them better for a republican government. They had also a republican education: their former internal government was republican, and the principles and vices of it were restrained by the beneficence of an over-ruling monarchy in this country. The formation of their constitution was preceded by a long war, in the course of which, by military discipline, they had learned order, submission to command, and a regard for great men. They had learned what — if it was allowable in so enlightened an age as the present to allude to antiquity — a king of Sparta had said was the great wisdom to be learned in his country — to command and to obey. They were trained to government by war, not by plots, murders, and assassinations. In the next place, they had not the materials of monarchy or aristocracy among them. They did not, however, set up the absurdity, that the nation should govern the nation; that Prince Prettyman should govern Prince Prettyman; but formed their government, as nearly as they could, according to the model of the British constitution. Yet he did not say, "Give this constitution to a British colony," because, if the bare imitation of the British constitution

was so good, why not give them the thing itself? as he who professed to sing like a nightingale, was told by the person to whom he offered his talents, that he could hear the nightingale herself. Hence he thought the greater number of inhabitants of that description, would have no objection to the British constitution; and the British inhabitants were probably not so much corrupted by the clubs of London and the academies of Paris, as to think any form of government preferable to an old one.

The ancient Canadians were next to be considered, and being the most numerous, they were entitled to the greatest attention. Were we to give them the French constitution — a constitution founded on principles diametrically opposite to ours, that could not assimilate with it in a single point; as different from it as wisdom from folly, as vice from virtue, as the most opposite extremes in nature — a constitution founded on what was called the rights of man? But let this constitution be examined by its practical effects in the French West-India colonies. These, notwithstanding three disastrous wars, were most happy and flourishing till they heard of the rights of man. As soon as this system arrived among them, Pandora's box, replete with every mortal evil, seemed to fly open, hell itself to yawn, and every dæmon of mischief to overspread the face of the earth. Blacks rose against whites, whites against blacks, and each against one another in murderous hostility; subordination was destroyed, the bonds of society torn asunder, and every man seemed to thirst for the blood of his neighbour.

> " Black spirits and white,
> Blue spirits and gray,
> Mingle, mingle, mingle" —

All was toil and trouble, discord and blood, from the moment that this doctrine was promulgated among them; and he verily believed, that wherever the rights of man were preached, such ever had been and ever would be the consequences. France, who had generously sent them the

precious gift of the rights of man, did not like this image of herself reflected in her child, and sent out a body of troops, well seasoned too with the rights of man, to restore order and obedience. These troops, as soon as they arrived, instructed as they were in the principle of government, felt themselves bound to become parties in the general rebellion, and, like most of their brethren at home, began asserting their rights by cutting off the head of their general. Mr. Burke read the late accounts from St. Domingo, delivered to the National Assembly, and added, that by way of equivalent for this information, M. Barnave announced the return of the members of the late Colonial Assembly to the true principles of the constitution. The members of an assembly no longer in existence had bequeathed their return to the principles of the constitution as their last act and deed as a body, and this was an equivalent for all the horrors occasioned by troops joining in a rebellion which they were sent to quell! Ought this example to induce us to send to our colonies a cargo of the rights of man? As soon would he send them a bale of infected cotton from Marseilles.

If we had so little regard for any of our colonies, as to give them that, for the sake of an experiment, which we would not take to ourselves,—if we were for *experimentum in corpore vili*, let us think how it would operate at home. Let us consider the effects of the French constitution on France, a constitution on which he looked not with approbation but with horror, as involving every principle to be detested, and pregnant with every consequence to be dreaded and abominated, and the use which they proposed to make of it. They had told us themselves, and the National Assembly had boasted, that they would establish a fabric of government which time could not destroy, and the latest posterity would admire. This boast had been echoed by the clubs of this country, the Unitarians, the revolution-society, the constitutional-society, and the club of the 14th of July. The assembly had now continued nearly two years in possession of the absolute authority which

they usurped; yet they did not appear to have advanced a single step in settling any thing like a government; but to have contented themselves with enjoying the democratic satisfaction of heaping every disgrace on fallen royalty. The constitution must be expected now, if ever, to be nearly complete; to try whether it was good in its effects, he should have recourse to the last accounts of the assembly itself. They had a king such as they wished, a king who was no king; over whom the Marquis de la Fayette, chief gaoler of Paris, mounted guard. The royal prisoner having wished to taste the freshness of the country air, had obtained a day-rule to take a journey of about five miles from Paris. But scarcely had he left the city, before his suspicious governors, recollecting that a temporary release from confinement might afford him the means of escape, sent a tumultuous rabble after him; who, surrounding his carriage, commanded him to stop, while one of the grenadiers belonging to his faithful and loyal body guard, presented a bayonet to the breast of the fore-horse ——

Mr. Baker here called Mr. Burke to order. He said he had sat many years in parliament, and no man entertained a higher opinion of the integrity and abilities of the right honourable gentleman than he did. His eloquence was great, and his powers, on many occasions, had been irresistible. His abilities might enable him to involve the House in unnecessary altercation; this, perhaps, the right honourable gentleman might do unwittingly for others, and not to serve any purpose of his own; he himself, perhaps, might be the unwilling instrument, and might involve the country itself in a contest with another nation. He could not, therefore, sit any longer without calling him to order. — Mr. Fox said, that he conceived his right honourable friend could hardly be said to be out of order. It seemed that this was a day of privilege, when any gentleman might stand up, select his mark, and abuse any government he pleased, whether it had any reference or not to the point in question. Although nobody had said a word on the subject of the French revolution, his right honourable friend had risen up and abused that event. He might have treated the Gentoo government, or that of China, or the government of Turkey,

or the laws of Confucius, precisely in the same manner, and with equal appositeness to the question before the House. Every gentleman had a right that day to abuse the government of every country as much as he pleased, and in as gross terms as he thought proper, or any government, either antient or modern, with his right honourable friend.

Mr. BURKE said, that his right honourable friend had accused him of abusing governments in very gross terms. He conceived his right honourable friend meant to abuse him in unqualified terms. He submitted to the committee whether he was or was not in order. The question was, whether the bill was then to be read paragraph by paragraph. It was a fair way in reasoning to see what experiments had been made in other countries. His right honourable friend had said that nobody had the least idea of borrowing any thing of the French revolution in the bill. How did his right honourable friend know that? If it was determined that he should be stopped, why was he not stopped in the beginning, and before he had declared the French revolution to be the work of folly and not of wisdom, of vice and not of virtue? If the committee permitted him to go on, he should endeavour to meet the most captious ideas of order. He declared he would not suffer friend nor foe to come between his assertion and his argument, and thereby to make him a railer. His honourable friend, who had called him to order, had said, that although he did not do it to serve any purpose of his own, he was probably, though unwittingly, the instrument of other people's folly. He declared, he had not brought forward this business from any views of his own. If the House did not suffer the affair to be discussed, if they shewed a reluctance to it ——

Here Mr. St. John called Mr. Burke to order. He really asked it as a favour of his right honourable friend, that he would fix a day on which he would bring on the discussion of the French constitution. He said he knew the English constitution; he admired it; he daily felt the blessings of it. He

should be extremely sorry if any person in England should endeavour to persuade any man, or body of men, to alter the constitution of the country. If his right honourable friend felt the mischiefs of the French constitution as applicable to the English constitution, let him appoint a day for that discussion.

Mr. BURKE said, he meant to take the sense of the committee, whether or not he was in order. He declared he had not made any reflection, nor did he mean any, on any one gentleman whatever. He was as fully convinced as he could be, that no one gentleman in that House wanted to alter the constitution of England. The reason why, on the first regular opportunity that presented itself, he had been anxious to offer his reflections on the subject, was, because it was a matter of great public concern, and occasion called for his observations. As long as they held to the constitution he should think it his duty to act with them; but he would not be the slave of any whim that might arise. On the contrary, he thought it his duty not to give any countenance to certain doctrines which were supposed to exist in this country, and which were intended fundamentally to subvert the constitution. They ought to consider well what they were doing. [Here there was a loud cry of Order! order! and Go on! Go on!] Mr. Burke said, there was such an enthusiasm for order that it was not easy to go on, but he was going to state what the result of the French constitution perfected was, and to shew that we ought not to adopt the principles of it. He might be asked, why state it, when no man meant to alter the English constitution? Why raise animosities, where none existed? and why endeavour to stir up passions where all was quiet before? He confessed a thing might be orderly, and yet that it might be very improper to discuss it. Was there any reason for doing this, or did they think the country was in danger? He declared he was ready to answer that question. He was perfectly convinced that there was no immediate danger. He believed the body of the country was perfectly sound, although attempts were made to take the constitution from their heads by absurd

theories. He firmly believed the English constitution was enthroned in the affections of their bosoms; that they cherished it as a part of their nature; and that it was as inseparable from Englishmen, as their souls and their bodies. Some ministers and others had, at times, apprehended danger, even from a minority; and history had shewn that in this way a constitution had been overturned. The question, he said, would be, what had they to do with the French constitution? They had no right to have recourse to the proceedings of the National Assembly, because the government of this country had not yet recognized it. If they had, they would silence him. If the French revolutionists were to mind their own affairs, and had shewn no inclination to go abroad and to make proselytes in other countries, Mr. Burke declared, that neither he nor any other member of the House, had any right to meddle with them. If they were not as much disposed to gain proselytes as Lewis the Fourteenth had been to make conquests, he should have thought it very improper and indiscreet to have touched on the subject. He would quote the National Assembly itself, and a correspondent* of his at Paris, who had declared that he appeared as the ambassador of the whole human race. Mr. Burke said, that an objection had been taken against arguing the business on the ground, that although it might be in order, yet the discussion of it might be attended with mischievous consequences. If some good were not to be obtained by it, he admitted it might be censurable to argue it, and prudence he owned was a very useful quality, and a part of every man's duty to his country. He hoped there was a very small minority indeed out of doors, who were dissatisfied with the English constitution, and who wished to put the country out of love with it, by endeavouring to fill them with admiration for another. He was asked, why he did not come forward with this business as a distinct subject? Before he did that, it would be proper first to know what support he was likely to have. He must know how government stood affected to the business, and also how the other side of the

House liked it. He had sat six-and-twenty years in that House, and had never called any man to order in his life. This being a question of prudence, he thought it was the part of a wise man and good citizen rather to discountenance the measure, and to admonish those, who might entertain such designs, of their danger, than to come immediately to the knife. He knew there was a levity natural to mankind; but when they were alarmed, they might recollect themselves, and correct those things which he should be sorry if the law were to correct for them.

Here there was a loud cry of "Chair! chair!" and "Hear! hear!" and Mr. Anstruther interrupted Mr. Burke and called him to order.

Mr. BURKE again submitted to the committee, whether he was orderly or not. He desired to proceed no further, without taking the sense of the House upon it. When he spoke of a design that was formed in this country against the constitution, he said, he spoke with all the simplicity of a member of parliament. He complained that his friends had not used him with candour. He said, if they reluctantly forced him to take a regular day, he should certainly do it, provided they gave him a regular parliamentary call to do it.

Mr. St. John called Mr. Burke to order a second time, and said, he should think it necessary to take the opinion of the House on his conduct, provided his right honourable friend pursued his irregular observations.

Mr. BURKE said, an attempt was now made, by one who had been formerly his friend, to bring down upon him the censure of the House; it was unfortunate for him, sometimes to be hunted by one party, and sometimes by another. He considered himself to be unfairly treated by those gentlemen with whom he had been accustomed to act, but from whom he now received extreme violence. He should, he said, if the tumult of order abated, proceed in the

account he was going to give of the horrible and nefarious consequences flowing from the French idea of the rights of man.

Here Lord Sheffield rose. He said he was convinced that Mr. Burke was disorderly, and would move, "That dissertations on the French constitution, and to read a narrative of the transactions in France, are not regular or orderly on the question that the clauses of the Quebec bill be read a second time, paragraph by paragraph." Mr. Fox seconded the motion in a speech of some length *. As soon as he sat down,

Mr. BURKE commenced his reply, in a grave and governed tone of voice, observing that although he had himself been called to order so many times, he had sat with perfect composure, and had heard the most disorderly speech that perhaps ever was delivered in that House. He had not pursued the conduct of which an example had been set him, but had heard, without the least interruption, that speech out to the end, irregular and disorderly as it had been. His words and his conduct throughout had been misrepresented, and a personal attack had been made upon him from a quarter he never could have expected, after a friendship and an intimacy of more than two-and-twenty years; and not only his public conduct, words, and writings, had been alluded to in the severest terms, but confidential conversations and private opinions had been brought forward, with a view of proving that he acted inconsistently; and now a motion was introduced, which hindered him, in a great measure, from having an opportunity to ascertain, by facts, what he had stated as opinions. He could not help thinking, that on the subject of the French revolution, he had met with great unfairness from the right honourable gentleman, who had accused him of speaking rashly, without information, and unsupported by facts to bear out his deductions, and that he had been

* See Fox's Speeches, Vol. IV. p. 213.

treated in a manner that did little justice to his feelings, and had little appearance of decency on the part of the right honourable gentleman. However, when and as often as this subject came to be discussed fairly, and facts that he was in possession of were allowed to be brought forward, he was ready to meet the right honourable gentleman hand to hand, and foot to foot upon it. Much had been said against proceeding without good information. He was ready to state his proofs for all the facts he had alleged, to which public proof was at all applicable; there were, indeed, a few particulars on which he did not chuse to take issue; because, in the present state of things in the happy country of France, he might subject his relators to the fashionable summary justice of the *lanterne*. Under a very few reserves of that kind, he was ready to enter into the discussion concerning the facts in that book, whenever he pleased. He might possibly have fallen into minute and trivial mistakes, but he was sure he was substantially right in every substantial matter of fact. Of the truth of the few matters on which he must decline offering proof, he pledged himself, upon his honour, that he had sufficient to satisfy a sober and considerate judgment.

But this, it seemed, was not the cause of quarrel; it was not because this authority or that example were mentioned; but he was accused of misrepresenting what the right honourable gentleman had said on a former day, when he owned he was not present, and which he disavowed in the most positive terms. He denied any reference to that, or to any other speech of the right honourable gentleman, and contended that he had argued on this, as he wished to do on every other occasion, in a candid, plain, and simple manner. With regard to the subject which he meant to introduce in the committee on the Quebec bill, the right honourable gentleman was no stranger to the grounds he meant to go upon. He had opened to him very particularly the plan of his speech; how far he meant to go; and what limits he proposed to put upon himself. His reasons for forming those opinions, he had mentioned in the fullest

and most particular manner to his right honourable friend at his own house, and had walked from thence to that House with him, conversing all the time on the subject. The right honourable gentleman had then entirely disagreed with him upon it, but they had no quarrel upon it, and what the right honourable gentleman had said upon the subject, he did not now wish to state. He could not, however, be persuaded, from what the right honourable gentleman had urged, to give up his purpose of stating to the House, upon this occasion, his mind with regard to the French constitution, and the facts which led him to think as he did; and certainly in this he thought there could be nothing disorderly, especially when so much had been already introduced, not about the constitution of Quebec, but about the American constitution. He had asserted, that dangerous doctrines were encouraged in this country, and that dreadful consequences might ensue from them, which it was his sole wish and ambition to avert, by strenuously supporting the constitution of Great Britain as it is, which, in his mind, could better be done by preventing impending danger, than by any remedy that could afterwards be applied; and he thought himself justified in saying this, because he did know that there were people in this country avowedly endeavouring to disorder its constitution and government, and that in a very bold manner.

The practice now was, upon all occasions, to praise in the highest strain, the French constitution; some indeed qualified their argument so far, by praising only the French revolution; but in that he could see no difference, as the French constitution, if they had any, was the consequence and effect of that revolution. So fond were gentlemen of this favourite topic, that whoever disapproved of the anarchy and confusion that had taken place in France, or could not foresee the benefits that were to arise out of it, were stigmatised as enemies to liberty, and to the British constitution, — charges that were false, unfounded, misapplied, and every way unfair. Doctrines of this kind, he thought, were extremely dangerous at all times, and much

more so, if they were to be sanctioned by so great a name as that of the right honourable gentleman, who always put whatever he said in the strongest and most forcible view in which it could possibly appear. Thus, it had become common to set the French constitution up against the English constitution, upon all occasions, when the comparison could be introduced; and then, he insisted, if the former was praised, the latter must be proportionably depreciated. Here again he reverted to what he had been told had passed on a former day, when the right honourable gentleman had taken fire when the French constitution was mentioned, and had termed it the most glorious and stupendous fabric that ever was reared by human wisdom.

He still insisted, that the discussion of the Quebec bill was a proper opportunity, after what had been said, for entering upon a true and minute comparison of the French constitution with that of England, though the disorderly rage for order that prevailed that day, seemed to be adopted for the purpose of precluding every fair or proper discussion. He had that day been accused, among other breaches of friendship towards the right honourable gentleman, of having provoked this discussion, for the purpose of giving an advantage to the right honourable gentleman's enemies — a principle of action that he utterly disclaimed, and never thought that any fair or candid man could have brought against him. However, if any could have supposed so before what they had heard from the opposite side of the House, this day must convince them of the contrary. In what he had repeatedly said and written concerning the French revolution, he had been accused of stating his opinions rashly and without foundation, a charge which he was certainly anxious and able to refute, if he had been allowed; and at the very time when he was going to produce facts in support of what he had asserted, blended partly with private information and respectable authorities, though he perhaps might have gone greater lengths than he wished, by disclosing communications which he ought to conceal, yet being so particularly called upon, he would

have done it; at this very moment, he was stopped in the most unfair, and (notwithstanding the rage for order) the most disorderly manner; and, but for this extraordinary conduct, he would have proved that the issue of the French constitution, or revolution, whichever they liked to call it, could never serve the cause of liberty, but would inevitably promote that of tyranny, oppression, injustice, anarchy, and confusion.

After what had been said, nobody could impute to him interested or personal motives for his conduct. Those with whom he had been constantly in habits of friendship and agreement, were all against him, and from the other side of the House he was not likely to have much support; yet, all he did, was no more than his duty. It was a struggle, not to support any man, or set of men, but a struggle to support the British constitution, in doing which he had incurred the displeasure of all about him, and those opposite to him; and, what was worst of all, he had induced the right honourable gentleman to rip up the whole course and tenor of his life, public and private, and that not without a considerable degree of asperity. His failings and imperfections had been keenly exposed, and, in short, without the chance of gaining one new friend, he had made enemies, it appeared malignant enemies, of his old friends; but, after all, he esteemed his duty far beyond any friendship, any fame, or any other consideration whatever. He had stated the danger which the British constitution was daily in, from the doctrines and conduct of particular persons; however, as neither side of the House supported him in this, but as both sides thought otherwise, he would not press that point upon them now in any stronger way than he had done; but he would still aver, that no assistance which could either be given or refused to him, would ever bias him against the excellence of the British constitution; nor lead him to think well of the French revolution, or the constitution, as it was named, that was formed in its place.

The right honourable gentleman, in the speech he had just made, had treated him in every sentence with un-

common harshness. In the first place, after being fatigued with skirmishes of order, which were wonderfully managed by his light troops, the right honourable gentleman brought down the whole strength and heavy artillery of his own judgment, eloquence, and abilities, upon him, to crush him at once, by declaring a censure upon his whole life, conduct, and opinions. Notwithstanding this great and serious, though, on his part, unmerited attack and attempt to crush him, he would not be dismayed; he was not yet afraid to state his sentiments in that House, or any where else, and he would tell all the world that the constitution was in danger. And here he must, in the most solemn manner, express his disapprobation of what was notorious to the country, and to the world. Were there not clubs in every quarter, who met and voted resolutions of an alarming tendency? Did they not correspond, not only with each other in every part of the kingdom, but with foreign countries? Did they not preach in their pulpits doctrines that were dangerous, and celebrate at their anniversary meetings, proceedings incompatible with the spirit of the British constitution? Admitting these things to be true—and he believed no one would say his assertions were ill-founded—would they hesitate a moment to pronounce such transactions dangerous to the constitution, and extremely mischievous in their nature? In addition to these, were not infamous libels against the constitution circulated every where at a considerable expence? The malignity with which the right honourable gentleman had spoken of his sentiments with regard to government, and the charge he had brought against him of inconsistency in his political life and opinions, were neither fair nor true; for he denied that he ever entertained any ideas of government different from those which he now entertained, and had upon many occasions stated. He laid it down as a maxim, that monarchy was the basis of all good government, and the nearer to monarchy any government approached, the more perfect it was, and *vice versa*; and he certainly, in his wildest moments, never had so far forgotten the nature of

government, as to argue that we ought to wish for a constitution that we could alter at pleasure and change like a dirty shirt. He was by no means anxious for a monarchy with a dash of republicanism to correct it. But the French constitution was the exact opposite of the English in every thing, and nothing could be so dangerous as to set it up to the view of the English, to mislead and debauch their minds. In carrying on the attack against him, the right honourable gentleman had been supported by a corps of well disciplined troops, expert in their manœuvres, and obedient to the word of their commander *. [Mr. Grey here called Mr. Burke to order, conceiving that it was disorderly to mention gentlemen in that way, and to ascribe improper motives to them.]

Mr. Burke explained, and went on. He said he had already stated, that he believed those who entertained doctrines which he dreaded as dangerous to the constitution, to be a very small number indeed. But if the spirit was suffered to ferment, who could tell what might happen? Let it be remembered, that there were 300,000 men in arms in France, who at a favourable moment might be ready to assist that spirit; and though there might be no immediate danger threatening the British constitution, yet a time of scarcity and tumult might come, and in such a case it was certainly safer and wiser to prevent the consequences, than to remedy the evil. He recurred to the events of the year 1780, and mentioned the dreadful consequences of the riots occasioned by Lord George Gordon. Had he

* "It is probable that a little incident which happened in the course of Mr. Burke's reply contributed to draw from him the expressions considered as disorderly by Mr. Grey. In his speech Mr. Fox had intimated an intention of leaving the House, if the committee should suffer Mr. Burke to proceed. While the latter gentleman was speaking, the former, being perhaps now resolved on a rejoinder, accidentally went towards the lobby for some trifling refreshment, with which he soon after returned to his place. But in the mean time about twenty or thirty gentlemen, of those most personally attached to him, mistaking his departure for the execution of his declared intention, rose from their seats, and followed him out of the House." Annual Register for 1791, p. 126.

at that time cautioned the House to beware of the Protestant Association, and other caballing meetings, he supposed his cautions would have been treated in the same way as those he offered now; but he trusted no person would wish again to see such destruction and disorder — the houses of some of the greatest and best men that ever adorned the country, the Marquis of Rockingham and Sir George Savile, beset by the mob, and obliged to be defended by armed force; they surely could not desire again to behold camps in all our squares, and garrisons in our palaces. As to the present state of this country, the king was in full possession of all his functions, his ministers were responsible for all their conduct; the country was blessed with an opposition of strong force; and the common people were united with the gentlemen in a column of prudence. From all which he argued, that the present was the moment for crushing this diabolical spirit, and that the slightest attempt to subvert the principles of the constitution ought to be watched with the greatest jealousy and circumspection. When he spoke of our constitution as valuable, he said he spoke of the whole complete, and not of any particular or predominant part; and therefore he thought it wiser to be prepared for any attack that might be made upon it, than to trust that we could preserve it after the attack was made.

Having dwelt for some time upon this point, he next recapitulated the political questions upon which he had differed with the right honourable gentleman upon former occasions, particularly the several attempts that had been made for a parliamentary reform, the dissenters bill, and the royal marriage act. There might, perhaps, be other instances; but in the course of their long acquaintance, no one difference of opinion had ever before for a single moment interrupted their friendship. It certainly was indiscretion, at any period, but especially at his time of life, to provoke enemies, or give his friends occasion to desert him; yet if his firm and steady adherence to the British constitution placed him in such a dilemma, he would risk all; and, as public duty and public prudence taught him,

with his last words exclaim, "Fly from the French constitution." [*Mr. Fox here whispered, that there was no loss of friends.*] Mr. Burke said, *Yes, there was a loss of friends — he knew the price of his conduct — he had done his duty at the price of his friend — their friendship was at an end.* He had been told, that it was much better to defend the English constitution, by praising its own excellence, than by abusing other constitutions, and certainly the task of praising was much more pleasant than that of abusing; but he contended, that the only fair way of arguing the merits of any constitution, was by comparing it with others, and he could not speak with propriety of the excellence of the English constitution, without comparing it with the deformity and injustice of the French, which was the shade that brought its colours forward in the brightest point of view; and to omit to do it, would be like presenting a picture without a shade.

Before he sat down, he earnestly warned the two right honourable gentlemen who were the great rivals in that House, that whether they hereafter moved in the political hemisphere as two flaming meteors, or walked together like brethren hand in hand, to preserve and cherish the British constitution, to guard against innovation, and to save it from the danger of those new theories. In a rapturous apostrophe to the infinite and unspeakable power of the Deity, who, with his arm, hurled a comet like a projectile out of its course — who enabled it to endure the sun's heat, and the pitchy darkness of the chilly night; he said, that to the Deity must be left the task of infinite perfection, while to us poor, weak, incapable mortals, there was no rule of conduct so safe as experience. He concluded with moving an amendment, that all the words of the motion, after "Dissertations on the French constitution," should be omitted, and the following be inserted in their room — "tending to shew that examples may be drawn therefrom; and to prove that they are insufficient for any good purposes, and that they lead to anarchy and confusion, and are consequently unfit to be introduced into schemes of

government, and improper to be referred to on a motion for reading the Quebec bill paragraph by paragraph."*

Mr. Fox rose to reply, but his mind was so much agitated, and his heart so much affected by what had fallen from Mr. Burke, that it was some minutes before he could proceed. Tears trickled down his cheeks, and he strove in vain to give utterance to feelings that dignified and exalted his nature. The sensibility of every member present seemed to be uncommonly excited upon the occasion. Being at length recovered from the depression under which he had risen, Mr. Fox proceeded to answer the assertions which had caused it†. When he had concluded,

Mr. BURKE again rose. He began with remarking, that the tenderness which had been displayed in the beginning and conclusion of Mr. Fox's speech, was quite obliterated by what had occurred in the middle part. He regretted, in a tone and manner of earnestness and fervency, the proceedings of that evening, which he feared might long be remembered by their enemies to the prejudice of both. He was unfortunate to suffer the lash of Mr. Fox, but he must encounter it. Under the mask of kindness a new attack, he said, was made upon his character and conduct in the most hostile manner, and his very jests brought up in judgment against him. He did not think the careless expressions and playful triflings of his unguarded hours

* In the course of the above speech, Mr. Burke having said, that Mr. Fox had of late years forborne that friendly intercourse with him, by visits, &c. which he had formerly preserved, the latter, in reply, said, that the omission complained of was purely accidental; that men, at different periods, fell into different habits; and without any intentional neglect, it frequently happened that they did not see their friends so often as they might have done in preceding years; but at the same time, that their friendship was as warm and as sincere as ever. Mr. Burke likewise, while in one of the parts of it, where he was reasoning with great warmth, checked himself, and addressing himself to the chair, said, "I am not mad, most noble Festus, but speak the words of truth and soberness."

† See Fox's Speeches, Vol. iv. p. 220.

would have been recorded, mustered up in the form of accusations, and not only have had a serious meaning imposed upon them, which they were never intended to bear, but one totally inconsistent with any fair and candid interpretation. Could his most inveterate enemy have acted more unkindly towards him? The event of that night's debate, in which he had been interrupted without being suffered to explain, in which he had been accused without being heard in his defence, made him at a loss to understand what was either party or friendship. His arguments had been misrepresented. He had never affirmed that the English, like every other constitution, might not in some points be amended. He had never maintained, that to praise our own constitution the best way was to abuse all others. The tendency of all that had been said, was to represent him as a wild inconsistent man, only for attaching bad epithets to a bad subject.

With the view of shewing his inconsistency, allusions had been made to his conduct respecting his economical reform in 1780, the American war, and the questions of 1784; but none of these applied. If he thought, in 1780, that the influence of the crown ought to be reduced to a limited standard, and with which Mr. Fox himself, at the time, seemed to be satisfied, it did not follow that the French were right in reducing it with them to nothing. He was favourable to the Americans, because he supposed they were fighting, not to acquire absolute speculative liberty, but to keep what they had under the English constitution; and as to his representation to the crown in 1784, he looked back to it with self-gratification, still thinking the same. Yet he knew not how to devise a legislative cure for the wound then inflicted, as it came from the people, who were induced to decide for the crown, against the independence of their own representatives. The inconsistency of his book with his former writings and speeches, had been insinuated and assumed, but he challenged the proof by specific instances; and he also asserted, that there was not one step of his conduct, nor one syllable of his

book, contrary to the principles of those men with whom our glorious revolution originated, and to whose principles, as a Whig, he declared an inviolable attachment. He was an old man, and seeing what was attempted to be introduced instead of the ancient temple of our constitution, could weep over the foundation of the new.

He again stated, still more particularly, the endeavours used in this country to supplant our own by the introduction of the new French constitution; but he did not believe Mr. Fox at present had that wish, and he did believe him to have delivered his opinions abstractedly from any reference to this country: yet their effect might be different on those who heard them, and still more on others through misapprehension or misrepresentations. He replied to the grounds on which Mr. Fox explained his panegyric. The lesson to kings, he was afraid, would be of another kind. He had heard Mr. Fox own the King of France to be the best intentioned sovereign in Europe. His good nature and love of his people had ruined him. He had conceded every thing, till he was now in a jail. The example of the confusions, on the other hand, would have very little operation, when it was mentioned with tardy and qualified censure, while the praises of the revolution were trumpeted with the loudest blasts through the nation. He observed, that Mr. Fox himself had termed the new French system a most stupendous and glorious fabric of human integrity. He had really conceived, that the right honourable gentleman possessed a better taste in architecture, than to bestow so magnificent an epithet upon a building composed of untempered mortar. He considered it as the work of Goths and Vandals, where every thing was disjointed and inverted.

It had been said that he did not love tests; yet, if his intimacy should be renewed with the right honourable gentleman, he might explain to him, that it was necessary that some evil should be suffered in order to obtain a greater good. In France, it had been asserted by the right honourable gentleman, that the largest religious toleration prevailed. It would be judged of what nature that tole-

ration was, when it was understood that there the most cruel tests were imposed. Nay, tests were imposed for the most inhuman of all purposes — in order to deprive those of whom they were exacted of their bread. The treatment of the Nuns was too shocking almost to be mentioned. These wretched girls, who could only be animated by the most exalted religious enthusiasm, were engaged in the most painful office of humanity, in the most sacred duty of piety, visiting and attending the hospitals. Yet these had been dragged into the streets; these had been scourged by the sovereigns of the French nation, because the priest, from whom they had received the sacrament, had not submitted to the test. And this proceeding had passed not only unpunished, but uncensured. Yet, in the country in which such proceedings had happened, the largest religious toleration had been said to subsist. The present state of France was ten times worse than a tyranny. The new constitution was said to be an experiment; but the assertion was not true. It had already been tried, and had been found to be only productive of evils. They would go on from tyranny to tyranny, from oppression to oppression, till at last the whole system would terminate in the destruction of that miserable and deluded people. He said that his opinion of the revolution in America did not at all militate with his opinion of the revolution of France. In that instance, he considered that the people had some reason for the conduct which they pursued.

Mr. Burke said, that he was sorry for the occurrence of that day. Sufficient for the day was the evil thereof. Yet if the good were to many, he would willingly take the evil to himself. He sincerely hoped that no member of that House would ever barter the constitution of this country, the eternal jewel of their souls, for a wild and visionary system, which could only lead to confusion and disorder. With regard to pretences of friendship, he must own that he did not like them, where his character and public conduct, as in the present instance, had been so materially attacked and injured. The French principles in this

country, he had been told, would come to some head. It would then be perceived what were their consequences. Several of the gentlemen present were young enough to see a change, and enterprising enough to act a part in the events that might arise. It would then be seen whether they would be borne on the top, or encumbered in the gravel. In going along with the current, they would most certainly be forced to execute and approve many things very contrary to their own nature and character.

Mr. Pitt, after having made some remarks upon the singular situation in which the House then stood with respect to the question before it; and having declared his own opinion to be, that Mr. Burke had not been, even in the first instance, at all out of order, suggested the propriety of withdrawing the motion which had been made by Lord Sheffield. This being agreed to, the chairman reported progress, and asked leave to sit again.

May 11.

On the 11th of May, the clauses of the bill were debated. Nothing very material occurred till the clause relating to the legislative council was read, when Mr. Fox rose to object to it. He took this opportunity of entering into a declaration of his political opinions*. His speech seemed to give great satisfaction to Mr. Pitt, who remarked, however, that a different impression respecting Mr. Fox's sentiments had been made both in that house and abroad, by the debate of the former evening. Believing him now to be truly sincere, he congratulated himself, that he might expect to have, he might be sure of having, the aid of such eloquence and talents, to resist any attempt at any time to impair or destroy the constitution of this country.

Mr. Burke rose. He said he had served the House and the country in one capacity or other for twenty-six years, five and twenty of which had been spent within those walls. He had, he said, wasted so large a portion of his

* See Fox's Speeches, vol. iv. p. 228.

life to a precious purpose, if that House should at last countenance a most insidious design to ruin him in reputation, and crown his age with infamy. For the best part of the time, he had been a very laborious and assiduous, though a very unimportant servant of the public. He had not, he declared, been treated with friendship; but if he was separated from his party, if sentence of banishment had been pronounced against him*, he hoped to meet a fair, open hostility, to which he would oppose himself in a firm, manly way, for the very short period that he should continue a member of that House. He felt deeply wounded, but *jam certus eundi, carpebat somnus.* With regard to the friendly censures that a right honourable gentleman had cast on him, he felt the difficulty that he had experienced the other night, in a peculiar degree at that moment; because if he should reply to what he had heard from the right honourable gentleman near him, on his idea of a legislative council for Canada, and should say that his sentiments were too democratical, he should then be liable to be pointed out as invidiously designing to prevent the right honourable gentleman's preferment, by describing him as unworthy of his monarch's favour; and if, on the other hand, in observing upon the different suggestions of the chancellor of the exchequer over the way, he should state that they appeared to him to be too favourable to monarchy, then he might be said to have charged that right honourable gentleman with holding principles of despotism, which would render him liable to the disfavour of that House, and of the crown, both of whom he ought

* See Appeal from the New to the Old Whigs, Burke's Works, Vol. vi. p. 74. The following paragraph appeared in the Morning Chronicle of the 12th of May 1791:—"The great and firm body of the Whigs of England, true to their principles, have decided on the dispute between Mr. Fox and Mr Burke; and the former is declared to have maintained the pure doctrines by which they are bound together, and upon which they have invariably acted. The consequence is, that Mr. Burke retires from parliament."

to honour and respect. Mr. Burke said farther, that in consequence of the turn the conversation between a right honourable gentleman and himself had taken the other night, he had heard that there was an intention to make or take an occasion of imputing whatever he might say, to a base premeditated artifice on his part, to make the right honourable gentleman pass for a republican, in order that he might sooner get into power himself. He had found this design conveyed to him as a secret, but the very next day a plot! a plot! was cried out in one of the common newspapers, which was wholly ascribed to him. Mr. Burke here read from a daily paper, an intimation that an account of such a plot had been received by the editor, but that for prudential reasons, he did not choose to print it. [Mr. M. A. Taylor rose to call Mr. Burke to order, but was prevented by the gentlemen who sat next him.]

Mr. Burke resumed his argument, and contended that he had a right to be heard, while he endeavoured to clear himself from the foul conduct that had been imputed to him. Would the House, he asked, think he was a fit man to sit there while under the imputation he had described? If he had wished to attack the right honourable gentleman for his opinions respecting what had happened in France, he was free to do it any day he chose; as the right honourable gentleman had sufficiently often avowed those opinions in that House. Finding himself, without any cause, separated and excluded from his party, it was a loss which he severely felt; but while he felt it like a man, he would bear it like a man. He denied that he had ever imputed democratic principles to the right honourable gentleman with a view to hurt him in the mind of his sovereign, and if he had pushed him to a declaration of his principles, the speech of the right honourable gentleman that day would prove whether he was likely to have attained his end, if he had wished to draw from him a declaration of democratic principles. In the course of the conversation the other evening, the right honourable gentleman had said, that he

had written a book which he had thought it seasonable and proper for him to go about and reprobate in all its essential parts and principles [A cry of No! no! from the opposition benches.] He rose therefore to justify himself in the face of that House and of his country, and in the face of an adversary the most able, eloquent, and powerful that ever was encountered, and (he was sorry to perceive) the most willing to rake up the whole of his opinions and conduct, in order to prove that they had been abandoned by him with the most shameless inconsistency. He avowed the book and all it contained. He said he had written it, in order to counteract the machinations of one of the most desperate and most malignant factions that ever existed in any age or country. He would still oppose the mischievous principles of such a faction, though he was unfortunate enough to stand alone, unprotected, supported with no great connexions, with no great abilities, and with no great fortune. And thus was he delivered over to infamy at the end of a long life, just like the Dervise in the fable, who, after living till ninety in the supposed practice of every virtue, was tempted at last to the commission of a single error, when the devil spat in his face as a reward for all his actions! In order to support monarchy, had he said, the other evening, that it was right to abuse every republican government that ever existed? Had he abused America, or Athens, or Rome, or Sparta? But every thing had been remembered that he had ever said or written, in order to render it the ground of censure and of abuse. He declared he could not caution the House too much against what had passed in France, but he had not called that country a republic; no, it was an anomaly in government, he knew not by what name to call it, nor in what terms to describe it:

"———————————— A shape,
If shape it might be called, that shape had none
Distinguishable in member, joint, or limb;
Or substance might be call'd that shadow seem'd,

For each seem'd either; black it stood as night,
Fierce as ten furies, terrible as hell,
And shook a dreadful dart; what seem'd his head,
The likeness of a kingly crown had on.
* * * * * * * *
A cry of hell-hounds never ceasing bark
With wide Cerberian mouths full loud, and rung
A hideous peal."

It was, he added, "A shapeless monster, born of hell and chaos." After having repeated these emphatical lines, Mr. Burke observed, that the right honourable gentleman's words had gone deep to his heart, when he had told him, "he knew how to draw a bill of indictment against a whole people." He knew not how to draw any such bill of indictment; but he would tell the House who could, — the National Assembly of France, who had drawn a bill of indictment against the people of St. Domingo. He could draw a bill of indictment against murder, against treason, against felony, or he could draw such a bill against oppression, tyranny and corruption, but not a bill of indictment against a whole people.

After a great deal of remark and complaint on the ground of matter personal to himself, Mr. Burke at length came to consider the subject of the clause before the House. He said that the chancellor of the exchequer had spoken his sentiments upon the subject more eloquently than he could do. In a monarchy the aristocracy must ever be nearer to the crown than to the democracy, because it originated in the crown as the fountain of honour; but in those governments which partook not of any thing monarchical, the aristocracy there necessarily sprang out of the democracy. In our own constitution undoubtedly, as the right honourable gentleman had well defined it, our aristocracy was nearer to the crown than the people, because it reflected the honours of the sovereign. He must agree that a king of England was the root of the constitution, whereas in France, he was only, as he had been made to state himself, the first minister. A king of England

might, if he chose it, select any persons, however improper objects, for honours; but he did not do so, because it would, as he well knew, bring his crown into contempt; and therefore he exercised his prerogative in that respect cautiously and prudently. But could the King of France create nobility? He could not; because he was himself degraded, and a prisoner; his orders, therefore, would not be accompanied by respect, which ought ever to be the first attendant on nobility. Mr. Burke went much at large into the constitution of the House of Lords, declaring that the honour of a duke, a marquis, an earl or a viscount, were severally familiar to us; we knew the nature and origin of those honours. With us the crown was the fountain of honour; in other constitutions, the people said they themselves were. He spoke of the power of the crown to create a new order, as it had done in Ireland, and, he said, let the title given to the hereditary nobility in Canada be what it might, there could be no manner of doubt that those whom the king designed to honour would have more or less respect. Mr. Burke took notice of the suggestion of Mr. Fox, of having the council elective, which he owned he had put forcibly, because that right honourable gentleman never said any thing that was foolish; but he had gone beyond his point; it was true, we could not have in Canada ancient hereditary nobility as we had in this country, because we could not make that a hundred years old that was made but yesterday; but an elective council would clearly be a democratical council.

He next spoke much at length of the various sorts of governments that had obtained in different colonies. In some there were councils; others, again, had been a government by charter, consisting of a governor and a company, in which case the settlement was governed by the governor and freemen. He mentioned in particular the Mississippi scheme, which had been of that nature. He spoke of mere wealth alone as not a good ground for aristocracy, though wealth, he admitted, was a material thing in it. Undoubtedly, there might be titles, and baronetage he

thought not an unfit one, as it was a species of hereditary honour, though not so exalted as the peerage; but in all these things, Mr. Burke said, they must resort to experience. He spoke of the various constitutions that had prevailed in our American colonies before we lost them; the one which had approached nearest to perfection, was that of Massachusets; and yet the province rebelled; and so did the others, in which different forms of government prevailed. He did not therefore attribute the loss of our colonies to any one form of constitution for them; that form was undoubtedly the best under which they were the most flourishing and happy. He pointedly condemned what he called a close aristocracy, which he said would prove a dead weight on any government, counteracting and ultimately clogging its action. He recommended above all things an open aristocracy, and said, he had always thought the power of the crown to make an admiral who had distinguished himself a peer, and occasionally to decorate the old nobility by the infusion of new ones on account of their merit and their talents, one of the first and most excellent principles of the British constitution.

Having spoken much at large on the clause before the committee, Mr. Burke recurred to his own situation. The House he hoped would not consider him as a bad man, although he had been excommunicated by his party, and was too old to seek another. If his book stood an object of odium, he might possibly belong to a faction, but not to a party, and consequently could be of less use to his country. He defined the distinction between a party and a faction. A party, he had ever understood to mean a set of men, bound and united by principles to act together in watching over the conduct of ministers, and taking care that nothing should be done that was likely to prove injurious to the constitution; whereas a faction did not draw together upon any known principles, but was devoid of all principle of union and common interest. He said, that his making use of the words "disciplined troops" had been deemed uncivil, whereas he meant no incivility

by them. Discipline he had ever considered as one necessary quality of a party, and he trusted he had ever shewn himself reasonably a friend to discipline, which was that sort of connexion which made men act together as a compact body, having one common object, and professing to feel it in common with their leader. In that sense he had meant the word discipline the other evening, and he trusted the gentlemen of the party that had excluded him, would with their usual fairness continue to act against their common adversaries, on the common principles of public good, and not direct their weapons against a poor unfortunate man who had been twenty-six years exerting his best endeavours to serve his country.

He gave an account of his first entrance into parliament, declaring, that he remembered the first question he ever brought forward, he lost; the next he attempted, was to oppose the taking off the duty of one shilling from the land-tax, being of opinion, perhaps weakly, that it was necessary to keep up the taxes, although it was a period of peace, in order the sooner to reduce the debt of the country; and nothing could prevail on him to abandon his purpose. He had mentioned, at the time, that he had laid his political principles very low, in order that they might stick by him, and he by them, all his life. He had done so, and he had seen, on one occasion, two great parties join against him, who had never acted together before—Mr. Grenville's party, and the late Lord Rockingham's. He had then persisted, with the same pertinacity with which he now supported his unfortunate opinions on the French revolution. He complained of being obliged to stand upon his defence by that honourable gentleman who, when a young man, in the vigour of his abilities, at the age of fourteen years, had been brought to him, and evinced the most promising talents, which he had used his best endeavours to cultivate; and this man, who had arrived at the maturity of being the most brilliant and powerful debater that ever existed, had described him as having deserted and abandoned every one of his principles!

He said, that at a time when there was not a plot indeed, but open and avowed attempts were made by clubs and others, to circulate pamphlets and disseminate doctrines subversive of the prerogative, and therefore dangerous to the constitution, it was unwarrantable for any good subject to be day after day holding out a parade of democracy, in order to irritate a mob against the crown. It should not, and it ought not to be. The perpetually making violent and flaming panegyrics on the subject of what had happened in France, he condemned as dangerous; and he now supported the monarchy, not that he thought it better than the aristocracy or the democracy, but because it was attacked and endeavoured to be run down. In like manner when Lord George Gordon acted as a firebrand, and caused the proud city of London to bow its head to its very base, if they had joined in the cry against popery, was it not clear that they would have done infinite mischief? And yet he believed neither the right honourable gentleman nor himself were suspected of a violent attachment to popery; but was that the hour to stand up for protestantism? If they had been rash enough to have done so, they must have known that they would have clapped a firebrand to the pile; and that not only the metropolis, but all England would have been in a blaze. Let them take warning by that event. Let them recollect, that the mere suggestion that forty thousand persons could not assemble in a room — for no room was large enough to hold them — which appeared ridiculous and contemptible at first, had produced in one day such terror and alarm, that all ranks of people felt indescribable apprehension, and knew not whither to fly for safety. Just so there was at present a run against monarchy, which was said to be the child of his wild ungoverned imagination. Let them not rest securely on such a conception, but take care in time to prevent the possible effects. In saying what he had upon the subject, he was conscious he had done his duty; and he hoped he had in some measure averted what otherwise might have effected the downfall of the British constitution. That being

the case, separate and unsupported as he was, let not the party who had excommunicated him imagine that he was deprived of consolation — although all was solitude without, there was sunshine and company enough within.

Mr. Fox said, in reply, that however the right honourable gentleman might be unkind enough to impute democratical or republican notions to him, he could assure him that his sentiments, whether on religion or any other topic, always made a due impression on his mind. He said, that he did not like bestowing fulsome and unnecessary praises on the English constitution; they reminded him of a passage in one of our best poet's best plays; he meant, he said, King Lear; who asks his three daughters, how much they love him? Goneril and Regan answer him in terms of the most extravagant and studied panegyric; but when he puts the same question to Cordelia, she answers just as he would answer the same sort of question, if it were put to him respecting the constitution, when he should say, he loved the constitution of Great Britain just as much as a subject of Great Britain ought to love a government under which he enjoyed such blessings. They were all, Mr. Fox said, bound to love a constitution under which they lived happily, and whenever it should really be attacked, all he should say was, that he would not be found the most inactive in its defence. With regard to the right honourable gentleman's declaration, that he was separated from the party, if he was so separated, it must be by his own choice; and if he should repent that separation, he might be assured his friends would ever be ready to receive him, to respect him, and to love him, as heretofore.

Mr. BURKE rose in reply, and began with retorting on Mr. Fox for what he had said respecting the eulogies on the constitution. He said, they were at least as useful as that right honourable gentleman's almost daily professions of admiration of the revolution in France. As the right honourable gentleman had thought proper to appeal to a passage from one poet in praise of the constitution, he would take the liberty of remembering another line from another poet — *Qui non defendit, alio culpante.* He re-

ferred to the books that were in circulation, and said, there was serious cause for alarm, when associations publicly avowed doctrines tending to alienate the minds of all who read them from the constitution of their country, especially at a time when it was notorious that it was systematically run down abroad, and declaimed against as the worst in existence. He again reminded the committee, from how trivial a commencement Lord George Gordon's riots began, in consequence of which London had bowed its head so low. He said, he had never desired any books to be prosecuted, but the right honourable gentleman near him had done so more than once. He took notice of what had been said, that if he would repent, he would be received. He stood, he said, a man publicly disgraced by his party, and therefore the right honourable gentleman ought not to receive him. He declared he had gone through his youth without encountering any party disgrace; and though he had then in his age been so unfortunate as to meet it, he did not solicit the right honourable gentleman's friendship, nor that of any man, either on one side of the House or the other.

Thus ended a friendship which had lasted for more than the fourth part of a century!

IMPRISONMENT FOR DEBT.

May 12.

THIS day Mr. Grey moved, "That a committee be appointed to inquire into the practice and effects of imprisonment for debt."

Mr. BURKE seconded the motion. The public, he said, were under many obligations to the honourable gentleman

who had undertaken to bring forward so great, so laborious, and so delicate a business. It would be necessary for him, in this case, Mr. Burke said, to sift the false pretences of persons, and to make a nice discrimination between what was real and what was affected: He never had an opportunity of bringing forward this subject himself, though he was always ready to give his best assistance to those, of greater weight, by whom it was undertaken. The motion furnished an awful monument of the difficulty of giving a definition of law. It had been said that it was a state of liberty in society, to be governed by law. They had, Mr. Burke said, not only their prisons full, but they had a commonwealth of debtors, a commonwealth of prisoners; a commonwealth as numerous as many that had existed in ancient history. These prisoners were not distinguished from slaves, but actually were slaves, existing in a country valuing itself on its laws, and boasting its freedom, but in which they endured a greater portion of slavery than ever had been exercised by the most despotic powers. It certainly was a blemish in our law, that it produced all the effects of the most horrible tyranny, and likewise all the effects of the most abject slavery. It was a paradox strange and irreconcilable. One thing he wished to suggest, which was, that it was not to be held, that this business was in all cases connected with commerce. The contracting of debts often happened among the lower classes of men in the common transactions of life, and were deemed civil suits, founded on false credit; commerce was too wise and too cautious to act upon such a fallacious principle; in cases of commerce, the creditor only wished to secure the *cessio bonorum*. Not only the trading part of the community, therefore, but every man in the kingdom was deeply interested in the inquiry. If the system of laws on the subject was a wrong one, it affected every body. If any alteration was introduced with regard to the imprisonment of insolvent debtors, it would be said, perhaps, that such alteration would affect public credit. He denied it. It would make men cautious, and would tend to protect

them. There was no such thing, Mr. Burke said, as a corps of debtors; there was no such thing as a corps of creditors. Debts were contracted by the rash and inconsiderate credit that was given. The power of a creditor to seize the person of his debtor was like a person grasping at real money, and finding his hand full of assignats. He hoped the subject would be examined on the just and fair foundation of public credit; he hoped it would be examined on the fair principles of debtor and creditor. Debtor and creditor should never, he said, be separated; they were one person, and what was for the benefit of the one, was evidently for the advantage of the other. Besides, Mr. Burke observed, where they had one man in jail, they had two or three that were in daily terror of imprisonment. If there were ten thousand people in prison, there were at least thirty-thousand shut out from the means of getting their bread, and who either were in the prison of the mind, or in the prison of terror. How many persons were there, who existed in the prison of flight, and in hiding places; who were a loss to society, and a dead weight on the community! Thirty thousand at least were in that predicament. This, therefore, was a subject highly worthy of the wisdom and humanity of the House, and also highly honourable to the young gentleman, of very great abilities, who had taken it up, and had made the present motion. Mr. Burke concluded with observing, that it was a disgrace to the law of this country, to say that it had imprisoned more than the most absolute power had done in any other country.

The motion was agreed to *nem. con.*

Parliamentary Reform.

April 30. 1792.

In the spring of the year 1792, an association was formed among several persons of consequence in and out of parliament; the purpose of which was to obtain a reform in the representation of the people. The appellation by which they designated themselves was, "The Friends of the People." It soon counted among its members some of the most conspicuous characters, among the merchants and literary men, throughout the kingdom. They published their sentiments and resolutions with great spirit and freedom; and determined in the ensuing session to make a formal application to parliament. Conformably to the plan proposed, Mr. Grey gave notice, this day, that he intended in the following session to carry into execution the design proposed by the society. He founded its propriety on the opinion of the leading men in the House. Mr. Fox and Mr. Pitt, he said, had both declared themselves unequivocally on this subject, and the majority of the nation was of the same opinion. The critical state of the times had induced those who saw the necessity of obviating the probable consequences of the general discontents throughout the great body of the people, to frame such a system of representation as might, by its equitableness, put an end to their incessant complaints of being what they justly styled misrepresented, and made the instruments of ministerial projects, in which their interests were sacrificed to the ambitious views of their superiors. — This declaration called up Mr. Pitt, who inveighed with uncommon warmth against the designs of the society. This was not a time, he said, for moving questions that involved the peace and safety of the nation, and endangered the constitution of the kingdom. He was no enemy to a reform obtained peaceably by a general concurrence; but he thought the present time highly improper, and decidedly inimical to such an attempt. He had, it was true, at the conclusion of the American war, thought a reform immediately necessary to quiet the clamours and confusion that had arisen from the dread of an approaching bankruptcy, and to

unite both parliament and people in the most cordial endeavours to prevent so dreadful an evil. But however he might have been once inclined to promote schemes of reform, experience had taught him the danger of altering the established form of government. — Mr. Fox said, he had been long convinced that the interest of the nation required a reform of parliament. The frequent opposition of sentiments between the people and their representatives proved that the nation was not fairly represented; otherwise there would seldom, if ever, exist such extreme variances between them. The society entitled the Friends of the People, consisted of as respectable individuals as any that supported the ministry. True, there were among the former some violent republicans; but there were among the ministerialists, what was still worse, decided adherents to arbitrary power. These were the true authors of innovations, as they termed them; as if the constitution of this country were not erected upon perpetual changes of bad for good, and of good for better. But improvements were not to be confounded with innovations; the meaning of which word was always odious, and conveyed an idea of alterations for the worse.

Mr. BURKE began by saying, that there were few subjects indeed, which would have induced him to come down, and deliver his opinions in that House, but this was certainly one which he thought he was in duty bound not to pass over in silence. He was now an old man, and there was still a stronger reason for his not engaging in the discussion of public questions — he had received from his best friends the best advice that they could have given to him; it was, to retire. His friends judged right, and he certainly thought himself unfit for business, when he recollected that he had lost such friends, as any man must have been proud to associate with, and with whom he had so long acted with the most fervent and mutual sincerity. That being the case, the advice and the conduct of his friends, as well as twenty-seven years' experience in parliament, was a warning for him how to guide his future proceedings in that House, or in other words, a warning to retire, considering himself at the same time as one who had done his duty, and had become old and infirm in the

service of his country. Yet, while he left the more active concerns of life to the conduct of men more vigorous in years and in understanding, he still would put in his claim, as a friend to the country, to use his utmost exertions in its service, whenever an attack was made upon the constitution, and to defend its real interests against every attempt to overturn it. As invalids, therefore, were always put upon garrison duty, and though not the first for foreign service, were those who ought first to move when the garrison was attacked, it became his duty now to come forward; they ought especially to be foremost in the defence, because if they were worsted, they left behind them those who were possessed of more strength and greater power to defend it effectually.

In this view, he looked upon the present notice, which, taking it merely as a notice, he considered to be fraught with mischievous consequences; not that he meant to ascribe any wrong motives or intentions to those who brought it forward, because he knew well that there were amongst them many for whom he had the highest respect, and most sincere friendship; but, he must contend, that though their motives might be as pure and patriotic as could be, still, by acting upon an erroneous system, the consequences might be dangerous. He was happy to see, and to congratulate the House and the country upon one thing, and that was, that two very great, and deservedly very great men, both in the opinion of that House and of the country, gave similar opinions, and entertained similar sentiments upon this subject, with this only difference, that the right honourable gentleman opposite to him had stated his belief that no such grievances existed as ought to induce the House to agree to this idea of reform, and the other right honourable gentleman thought that if those grievances did exist, the friends to a reform had not proposed or held forth any thing like a remedy for them, because he was convinced that a parliamentary reform would not be an effectual remedy, if such grievances existed. He did not think that the word reform ought to carry that weight with

it which some gentlemen seemed to allow. If a reform was necessary, the way to prove that it ought to be agreed to was first by stating the grievance, and then pointing out the specific remedy. This, however, had not been done in the present case. The friends to this plan of reform seemed to address the people in the same manner, as if a physician were to say to a patient, "You labour under a terrible disease, and must take any and every remedy we prescribe for you; whether it be opium, an emetic, a blistering plaster, or all together, you must take them, however discordant in effects, because, depend upon it, you are in such a desperate situation that you must do it." Similar was the present mode of telling the people, "You are unhappy, ought to be discontented, and call for a reform, though we do not even pretend to specify or shew what reform is proper, or such as might be of any service to you." Mr. Burke said, he considered giving a vote in that House upon any subject as very different to joining an association for making converts to a cause by holding out to the people the necessity of complaining, when they themselves felt no cause for complaint. The present reformers appeared in the light of quacks, rather than regular physicians; they held out preventives when no disease was dreaded, and wished to cram them down the throats of the people, and make them complain, when they were not sensible of grievances, and when the public voice was completely different from what those friends to reformation stated it to be. He would ask, if the sense of the people had been consulted, whether this association would have been formed? Were there any petitions from the people stating their grievances? If this was not the case, was it good and constitutional doctrine to hold out to them, that the House of Commons was in itself a grievance? that there was in its formation something intrinsically corrupt? Let democracy get to its greatest extent in this country, or in that House, still it would be found that there were, and would continue to be, great men in that House upon different sides of any question, that must and ought to have influence. He re-

gretted being obliged to notice what a right honourable friend of his (Mr. Fox) had said, relative to the proceedings in the year 1784; their mischievous tendency he allowed as much as the right honourable gentleman; but what had arisen from the conduct of the different societies and clubs that associated in 1780, in various parts of the kingdom? These societies, in associating, were obliged to admit amongst their numbers men of very different principles, and reformers of various denominations; the consequence was, that no system could be thought of that suited the views of all, of course many were dissatisfied, and in the end they dropt every idea of their own reform. This failure, however, he could not ascribe to the right honourable gentleman opposite (Mr. Pitt), who did every thing he could to bring about a reform, and seemed as eager and zealous to effect it, as he enforced it with all the natural eloquence and energy that he possessed.

At that period, the acquiescence of the people was considered necessary, as he trusted it ever would, and it was found then, and he believed it would be found now, that the people had no such idea in their heads. They did not then, nor would they now, call for a parliamentary reform. What next did the right honourable gentleman say? Why, that they must make the people feel the grievances they laboured under, if they could not discover them themselves, and excite them to complaints which they knew no cause for; and all this they would do from the following argument: that they know some reform is necessary, and that by putting it into the hands of such men as are, from their rank, fortunes, character, and respectability in the country, the most likely to propose a temperate and adequate reform, having much at stake themselves, they will study the more the interests of the people. At to the characters of the men, he would not hesitate a moment to pronounce them entitled to every encomium that could be bestowed on them; but would they pledge their characters and their consequence in the country, that when they have once raised a strong spirit of reformation and innovation

amongst the people, they will have the power to guide their opinions, and prevent excesses, when the ideas of the people may probably carry them to an ungovernable length, upon a subject of which they understand so little? If the honourable gentlemen who proposed this could guide and regulate the public opinion as they could their own, the case would be different; but that was not possible, and therefore he thought there could be no such thing as a temperate reform. Let them recollect, that in the days of Hampden, Hyde, and other reformers, and at different periods of the English history, it was almost invariably found that the beginners of any reformation never saw it ended. This was one strong reason why they should not countenance any indefinite reform; for in fact they never could know its extent and its consequences.

He agreed perfectly with his right honourable friend, that this country had been for a very long time in a perpetual state of innovation and progressive reform, and though kings had reigned who rather checked than encouraged improvements of the constitution, yet it was found that improvements had, from time to time, taken place, and they were uniformly found to be rather in defence of the real constitution than innovations. It was likewise true, that we had at different times cut off certain branches of the prerogative, when those branches were found to be inimical to the welfare of the people; but we had always kept the lamp of the constitution burning, and supplied it occasionally with necessary assistance, without ever attempting to alter its former nature; we had seen a reformation, a revolution, and, on an abdication of the crown, we had seen a new family seated upon the throne; but we had never, at any one period, touched upon an alteration in the representation of the people till very lately. If we are in slavery, if in anarchy and confusion, if, in short, we labour under any grievance whatever, let us look if it proceeds from the representation of the people in parliament. Is the landed or commercial interest affected? does any one interest overpower or act against another in this

country? can it be proved that such are the effects of the present representation of the people? He really believed not. The Russian armament had been mentioned, and certainly that was a subject upon which the opinion of the people was very decided, though that opinion differed widely from the opinion of that House. The people were decidedly against the measure, but yet they did not go so far as to say that the measure ought to destroy the minister; and this, he contended, was generally the case with the people of England, whoever was minister at the time. It had been so with Sir Robert Walpole, and would be so with every future minister.

He came next to what had been said on Paine's book, which he thought had been very properly termed by the right honourable gentleman (Mr. Fox) a libel of the most infamous kind against the constitution of this country. He would ask those who supported those visionary schemes of reform, what it was they had to dread? Could they point out any person in that House who was the avowed friend to despotism? or could they suggest any thing like a conspiracy against the privileges of the people? He believed it was impossible; but he thought there was no difficulty in saying there were those in the country who were avowed enemies to the constitution. [A cry of, Name them! Name them!] He begged gentlemen not to distress themselves by the repetition of calls, with which he could not comply. He would ask, whether he had called upon them in a similar way, when they had made allusions much stronger than he had done; however, he would satisfy their curiosity on this point, by stating what the declared opinions of that night warranted him in doing, which was, that Paine's pamphlet was an infamous libel upon the constitution, and therefore that those clubs and societies who recommended that book to be read by the people, were the avowed enemies of the constitution, by prescribing to the people, what was admitted by the first men in that House, to be a libel on the constitution, and tending, by its contents, to subvert and overturn it. Mr. Paine had been

called a stranger, a foreigner, not an Englishman, a Frenchman, nor an American. In short, he seemed to be a man who knew just enough of all countries to confuse and distract all, without being of the least use to any. There were in this country men who scrupled not to enter into an alliance with a set in France of the worst traitors and regicides that had ever been heard of—the club of the Jacobins. Agents had been sent from this country, to enter into a federation with that iniquitous club, and those agents were men of some consideration in this country; the names he alluded to were Thomas Cooper and James Watt. Here Mr. Burke read the address presented to the club of the Jacobins by those gentlemen on the 16th of April. He said, this was nothing of fancy or invention, but an avowal that there were clubs in this country, who bound themselves, by a federation with those regicides, to approve their conduct, and act in concert with them. He likewise could name others who avowed similar principles; for instance, Mr. Walker of Manchester. And what did those people do? did they only give their own sentiments? No. By the answer of the Jacobin club, it appeared that those worthies of Manchester undertook—from what authority he knew not—to represent all England. This led him to state, that, however upright the motives of the honourable gentlemen near him might be, they must necessarily, in order to succeed in their object, unite themselves with some of the worst men in the kingdom.

Mr. Burke ridiculed the idea of a moderate or temperate reform as impossible, nor could he look upon the present schemes as if there were two parties, one for a temperate reform, and the other for a subversion of the constitution. And he would ask those honourable gentlemen, if they could answer for all who might join them on this occasion, and were sure that they would be satisfied with moderate measures? He then observed, that France was not in a situation for reform, but was distracted by a violent party. He described the National Assembly as consisting of seven hundred members, four hundred of

whom were lawyers, three hundred of no description that he could name; and out of the whole he believed there were not six of them that possessed in any one way a hundred pounds per annum. Having treated the National Assembly and their conduct with great contempt, he asked if this was a time for encouraging visionary reforms in this country? He said, though he had generally objected to the reforms formerly proposed, it was because the mode did not meet his approbation; and he never had resisted reform when he thought it likely to be useful; for instance, the reform moved by the right honourable gentleman opposite seemed to him, if it had been agreed to, productive of good effects, without risk of any harm; but in the year 1780, the associations in different parts of the country would have defeated any temperate reform. The noble Duke who was then a reformer had proposed one mode, and the right honourable gentleman another, and he stated what the difference between them was. He adverted to the county meetings, which he thought not the most probable or quiet way of obtaining the sense of the people, or even knowing the true sense of those meetings. He made some remarks on confidence in ministers, which had been too much enlarged, both in 1784 and 1792, towards the right honourable gentleman opposite, as had been stated by his right honourable friend. He then declared his fixed admiration of that constitution which gave us freedom without losing order; and which, by increasing its order, increased its liberty; and which, he hoped and trusted, he ever should see a continuance of, unmolested and secure against every attack. Theories ought to be found on experience, and instead of adapting the constitution to a theory, the theory he wished to see grow out of the constitution. He concluded, by putting it to the House to say, whether they knew of any existing grievance that warranted the risk, that must inevitably attend the proposed motion for a parliamentary reform.

Mr. Fox's Motion for the Repeal of certain Penal Statutes respecting Religious Opinions.

May 11.

ON the 8th of March Mr. Fox presented a petition from the Unitarians, complaining of the difficulties they were under from the provisions of certain penal statutes, and praying for a repeal of the same. On the 11th of May, he called the attention of the House to the subject. He shewed the impropriety of continuing to keep useless statutes in existence, insisted on the propriety of committing to the flames obsolete acts of parliament, framed in the days of bigotry and persecution, and obnoxious to every person of understanding and humanity, and concluded a speech of great ability * with moving, first, "That the different statutes of the 9th and 10th of King William, entitled An act for the more effectual suppressing of blasphemy and profaneness, the 1st of Edward VI. chap. 1.: the 1st of Queen Mary, chap. 3.; the 14th and 15th of Elizabeth, &c. &c. be read;" which being done, he then moved, "That leave be given to bring in a bill to repeal and alter sundry provisions of the said acts.".

Mr. Burke contended, that the question was now no longer a theological question, but from the comprehensive manner in which the subject had been treated by the right honourable gentleman, it became a question of legislative prudence upon a point of policy; and he could not help congratulating the House and the public on the manner in which the subject was brought forward. It was claimed as a matter of justice, and not called for as the effect of any of the new and false lights of the day which had lately made their appearance, and would soon again disappear. He trusted that these lights and the principles which fol-

* See Fox's Speeches, Vol. iv. p. 418.

lowed them, would be alike rejected in this country, and every thing that bore any resemblance to them; because to reject them was the sober duty of every member of that House, and what wisdom directed for the freedom of the state. Stripping the question, therefore, of its theological vestment, he should take it up as a question of policy and prudence, and in that view he confessed he did not see that sufficient reasons had been urged for the repeal of those statutes, and he therefore wished to have it well understood by the House, that upon the grounds on which he spoke — prudence and policy — nothing yet had been said.

The question he stated to be, whether the House should go into a committee for the purpose of examining the laws that had been enumerated. Before he delivered his opinion on the policy and prudence of the motion, he could not but congratulate the House on the delicacy used by the right honourable gentleman in matters of religion. Not one word had dropt from him irreligious, or even indifferent. Another cause of satisfaction to him, was deduced from the discovery that the House was untainted and uncorrupted by those false principles which had been so amply circulated without doors.

Alluding now to the policy and prudence of the motion, he confessed that he had heard no arguments why the 9th and 10th of King William ought at present to be repealed. As to the rights of man, on which the right honourable mover had laid some stress, he must be under the necessity of differing from him completely. What were the rights of man previous to his entering into a state of society? Whether they were paramount to, or inferior to social rights, he neither knew nor cared. Man he had found in society, and that man he looked at — he knew nothing of any other man — nor could he argue on any of his rights. As to abstract rights of all kinds, he thought they were incorporeal, and unfit for the body. They might be discussed in some other state; but they were totally unfit for this life, and consequently could not be fit for argument.

These abstract ideas were too airy diet, and ill suited the mixed constitution of man, which was composed of speculation and practice, of mind and body. He blamed Mr. Fox for collecting such multifarious matter, such different measures only by an abstract principle of toleration.

Of toleration and of persecution the House had never yet given a decided opinion. It had always acted from circumstances and the pressure of events — when it relieved a Quaker, it relieved a Quaker — when it alleviated the condition of a Catholic, it looked only to a Catholic. It never purged to the right and bled to the left at once.

In the present period, all discussions between the church and state had ceased, like a volcano burnt out, or like Vesuvius when Strabo saw it. Here stood the friendly olive —there the cheering vine — on this spot the supporting corn.

Of the Unitarians he knew nothing; they came, however, in such a questionable shape, that he conceived he had a right to ask them, whether they brought airs from Heaven or blasts from Hell? And whether their advent was wicked or charitable? The question now therefore was, whether we had sufficient reason to repeal those acts at this time. Upon this point he was of opinion, that the subject, as opened by Mr. Fox, did not depend upon the principles of toleration; putting that consideration also, as well as the theological part of the subject, out of the question, he should look at the petition of the Unitarians, as it now appeared before the House. The petition was against the general principles of the Christian religion, as connected with the state. It went to dismember the Christian commonwealth. By a Christian commonwealth there was established no alliance, as had often been erroneously stated, between church and state. Church and state were one and the same, and in order to see whether this petition agreed with that principle, the better way would be to look at the professions of the Unitarians. He had often heard that we were not always to believe the man who professed to be our friend; but the devil was in it, if we did not be-

lieve him, when he professed to be our enemy. The Unitarians were the enemies, the avowed enemies of the church; they had lately accused themselves of a disgraceful timidity with respect to the concealment of their sentiments, and now they were to atone for that timidity by an extraordinary boldness. They had avowed their hostility to the church. They had confessed their determination to propagate their doctrines. They were avowedly a society for the propagation of opinions immediately hostile to our church — they had incorporated for that purpose — they had published pamphlets with that view — they had raised a large fund to be employed in that service — they had entered into a solemn compact to obtain that end — it was well known that Doctor Priestley was their patriarch. Knowing all these things, the question was, whether persons with those views, wishes, and determinations, should be objects of the special grace and favour of that House. To prove that what he stated of them was true, he would read their publications, as publications issued to the world by themselves, which would be the best answer to the question, whether they were proper objects of favour, and whether to grant them indulgencies would be at this time prudent or politic.

In order to shew what were the principles of these Unitarians, he would give their own authority, by quoting the toasts given at one of their meetings, which might be considered as articles of faith in all associations and political meetings, both of the present and former days, all of which, fourteen in number, were bumper toasts, and he would not withhold from the House a single bumper, by refusing to read them. He contended that the celebration of the 14th of July, and the libels of Thomas Paine, were the causes of the riots at Birmingham, and that they proceeded from political and not religious prejudices; upon both of these topics he dwelt for a long time, as highly mischievous in themselves, and dangerous in their consequences, because those very people, who were petitioners, had avowed their approbation of the abominable proceedings at Paris on that day,

of horrid perfidy, and unprovoked rebellion; likewise of the doctrine of Paine, and not only approved of them, but as it were recommended them for the imitation of England, to prove that they were connected with the Revolution Society here, and the Club of Jacobins in Paris, and adopted the same principles to their fullest extent. He read several of their resolutions, and concluded, that such people were not fit men for relief or encouragement, from their sentiments and connections. He said, there was no religious liberty in France; but, on the contrary, the greatest persecution had subsisted ever since that dreadful 14th of July, and worse persecution than could possibly take place in this country. He regretted sincerely what had happened at Birmingham, but it was of some consequence to know, that if we had not laws to prevent such outrageous riots, we had law and justice enough to compensate the sufferers; this was not the case in France. He was sure the right honourable gentleman must have been imposed upon on that subject, when he thought those riots proceeded from religious prejudices against the Unitarians; for Dr. Priestley had preached and written his Unitarian system for eight-and-twenty years without any molestation, until he and his followers came forward to celebrate avowedly the 14th of July, and declared their principles to be precisely the same.

Mr. Burke then went into a description of almost every event that had taken place in France since the Revolution, accompanying his observations with severe remarks on the proceedings of the National Assembly. He contended, that the system of those in this country, who connected themselves with such society, and approved or recommended these principles for examples to this country, was nothing short of an avowed intention to subvert and overturn every establishment, political and religious, of every kind, and a wish to extend that destruction to all nations.

The above speech is taken from the Parliamentary Debates. The following fragment of what Mr. Burke either said, or in-

tended to say, upon this occasion was found amongst his papers after his decease. See his Works, Vol. X. p. 41.

* * * * * * * I never govern myself, no rational man ever did govern himself, by abstractions and universals. I do not put abstract ideas wholly out of any question, because I well know that under that name I should dismiss principles; and that without the guide and light of sound well-understood principles, all reasonings in politics, as in every thing else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion. A statesman differs from a professor in an university; the latter has only the general view of society; the former, the statesman, has a number of circumstances to combine with those general ideas, and to take into his consideration. Circumstances are infinite, are infinitely combined; are variable and transient; he, who does not take them into consideration is not erroneous, but stark mad — *dat operam ut cum ratione insaniat* — he is metaphysically mad. A statesman, never losing sight of principles, is to be guided by circumstances; and judging contrary to the exigencies of the moment he may ruin his country for ever.

I go on this ground, that government, representing the society, has a general superintending controul over all the actions, and over all the publicly propagated doctrines of men, without which it never could provide adequately for all the wants of society; but then it is to use this power with an equitable discretion, the only bond of sovereign authority. For it is not, perhaps, so much by the assumption of unlawful powers, as by the unwise or unwarrantable use of those, which are most legal, that governments oppose their true end and object; for there is such a thing as tyranny as well as usurpation. You can hardly state to me a case, to which legislature is the most confessedly competent, in which, if the rules of benignity and prudence are not observed, the most mischievous and oppressive things may not be done. So that after all, it is a moral

and virtuous discretion, and not any abstract theory of right, which keeps governments faithful to their ends. Crude unconnected truths are in the world of practice what falsehoods are in theory.

A reasonable, prudent, provident, and moderate coercion, may be a means of preventing acts of extreme ferocity and rigour; for by propagating excessive and extravagant doctrines, such extravagant disorders take place, as require the most perilous and fierce corrections to oppose them. It is not morally true, that we are bound to establish in every country that form of religion, which in *our* minds is most agreeable to truth, and conduces most to the eternal happiness of mankind. In the same manner it is not true that we are, against the conviction of our own judgment, to establish a system of opinions and practices directly contrary to those ends, only because some majority of the people, told by the head, may prefer it. No conscientious man would willingly establish what he knew to be false and mischievous in religion, or in any thing else. No wise man, on the contrary, would tyrannically set up his own sense so as to reprobate that of the great prevailing body of the community, and pay no regard to the established opinions and prejudices of mankind, or refuse to them the means of securing a religious instruction suitable to these prejudices. A great deal depends on the state, in which you find men. * * * * *

An alliance between church and state in a Christian commonwealth is, in my opinion, an idle and a fanciful speculation. An alliance is between two things that are in their nature distinct and independent, such as between two sovereign states. But in a Christian commonwealth the church and the state are one and the same thing, being different integral parts of the same whole. For the church has been always divided into two parts, the clergy and the laity; of which the laity is as much an essential integral part, and has as much its duties and privileges, as the clerical member; and in the rule, order, and government of the church, has its share. Religion is so far, in my opinion,

from being out of the province or the duty of a Christian magistrate, that it is, and it ought to be, not only his care, but the principal thing in his care; because it is one of the great bonds of human society; and its object the supreme good, the ultimate end and object of man himself. The magistrate, who is a man, and charged with the concerns of men, and to whom, very specially, nothing human is remote and indifferent, has a right and a duty to watch over it with an unceasing vigilance, to protect, to promote, to forward it by every rational, just, and prudent means. It is principally his duty to prevent the abuses, which grow out of every strong and efficient principle, that actuates the human mind. As religion is one of the bonds of society, he ought not to suffer it to be made the pretext of destroying its peace, order, liberty, and its security. Above all, he ought strictly to look to it when men begin to form new combinations, to be distinguished by new names, and especially when they mingle a political system with their religious opinions, true or false, plausible or implausible.

It is the interest, and it is the duty, and because it is the interest and the duty, it is the right of government to attend much to opinions; because, as opinions soon combine with passions, even when they do not produce them, they have much influence on actions. Factions are formed upon opinions; which factions become in effect bodies corporate in the state; — nay factions generate opinions in order to become a center of union, and to furnish watch-words to parties; and this may make it expedient for government to forbid things in themselves innocent and neutral. I am not fond of defining with precision what the ultimate rights of the sovereign supreme power in providing for the safety of the commonwealth may be, or may not extend to. It will signify very little what my notions, or what their own notions on the subject may be; because, according to the exigence, they will take, in fact, the steps, which seem to them necessary for the preservation of the whole; for as self-preservation in the individuals is the first law of nature, the same will prevail in societies, who will, right

or wrong, make that an object paramount to all other rights whatsoever. There are ways and means, by which a good man would not even save the commonwealth. * * * * * * All things founded on the idea of danger ought in a great degree to be temporary. All policy is very suspicious, that sacrifices any part to the ideal good of the whole. The object of the state is (as far as may be) the happiness of the whole. Whatever makes multitudes of men utterly miserable can never answer that object; indeed it contradicts it wholly and entirely; and the happiness or misery of mankind, estimated by their feelings and sentiments, and not by any theories of their rights, is, and ought to be, the standard for the conduct of legislators towards the people. This naturally and necessarily conducts us to the peculiar and characteristic situation of a people, and to a knowledge of their opinions, prejudices, habits, and all the circumstances that diversify and colour life. The first question a good statesmen would ask himself, therefore, would be, how and in what circumstances do you find the society? and to act upon them.

To the other laws relating to other sects I have nothing to say. I only look to the petition, which has given rise to this proceeding. I confine myself to that, because in my opinion its merits have little or no relation to that of the other laws, which the right honourable gentleman has with so much ability blended with it. With the Catholics, with the Presbyterians, with the Anabaptists, with the Independents, with the Quakers, I have nothing at all to do. They are in *possession*, a great title in all human affairs. The tenour and spirit of our laws, whether they were restraining, or whether they were relaxing, have hitherto taken another course. The spirit of our laws has applied their penalty or their relief to the supposed abuse to be repressed, or the grievance to be relieved; and the provision for a Catholic and a Quaker has been totally different, according to his exigence; you did not give a Catholic liberty to be freed from an oath, or a Quaker power of saying mass with impunity. You have done this, because you never have laid it down as an universal pro-

position, as a maxim, that nothing relative to religion was your concern, but the direct contrary; and therefore you have always examined whether there was a grievance. It has been so at all times; the legislature, whether right or wrong, went no other way to work but by circumstances, times, and necessities. My mind marches the same road; my school is the practice and usage of parliament.

Old religious factions are volcanoes burnt out; on the lava and ashes, and squalid scoriæ of old eruptions grow the peaceful olive, the cheering vine, and the sustaining corn. Such was the first, such was the second condition of Vesuvius. But when a new fire bursts out, a face of desolations comes on, not to be rectified in ages. Therefore, when men come before us, and rise up like an exhalation from the ground, they come in a questionable shape, and we must *exorcise* them, and try whether their intents be wicked or charitable; whether they bring airs from Heaven, or blasts from Hell. This is the first time that our records of parliament have heard, or our experience or history given us an account of any religious congregation or association known by the name which these petitioners have assumed. We are now to see by what people, of what character, and under what temporary circumstances, this business is brought before you. We are to see whether there be any, and what mixture of political dogmas and political practices with their religious tenets, of what nature they are, and how far they are at present practically separable from them. This faction (the authors of the petition) are not confined to a *theological* sect, but are also a *political* faction. 1st. As theological, we are to show that they do not aim at the quiet enjoyment of their own liberty, but are *associated* for the express purpose of proselytism. — In proof of this first proposition read their primary association. 2d. That their purpose of proselytism is to collect a multitude sufficient by force and violence to overturn the church; in proof of the second proposition, see the letter of Priestley to Mr. Pitt, and extracts from his works. 3d. That the designs against the church are concurrent with

a design to subvert the state. In proof of the third proposition, read the advertisement of the Unitarian Society for celebrating the 14th of July. 4th. On what *model* they intend to build, that it is the *French*. In proof of the fourth proposition, read the correspondence of the Revolution Society with the clubs of France; read Priestley's adherence to their opinions. 5th. What the *French* is with regard to religious toleration, and with regard to, 1. Religion — 2. Civil happiness — 3. Virtue, order, and real liberty — 4. Commercial opulence — 5. National defence. In proof of the fifth proposition, read the representation of the French minister of the home department, and the report of the committee upon it.

Formerly, when the superiority of two parties contending for dogmas and an establishment was the question, we knew in such a contest the whole of the evil. We knew, for instance, that calvanism would prevail according to the Westminster Catechism with regard to *tenets*. We knew that presbytery would prevail in *church-government*. But we do not know what opinions would prevail if the present dissenters should become masters. They will not tell us their present opinions; and one principle of modern dissent is not to discover them. Next, as their religion is in a continual fluctuation, and is so by principle, and in profession, it is impossible for us to know what it will be. If religion only related to the individual, and was a question between God and the conscience, it would not be wise, nor in my opinion equitable, for human authority to step in. But when religion is embodied into faction, and factions have objects to pursue, it will, and must, more or less, become a question of power between them. If even, when embodied into congregations, they limited their principle to their own congregations, and were satisfied themselves to abstain from what they thought unlawful, it would be cruel, in my opinion, to molest them in that tenet, and a consequent practice. But we know that they not only entertain these opinions, but entertain them with a zeal for propagating them by force, and employing the power of law and place to destroy establishments, if ever they should

come to power sufficient to effect their purpose: that is, in other words, they declare they would persecute the heads of our church; and the question is, whether you should keep them within the bounds of toleration, or subject yourself to their persecution.

A bad and very censurable practice it is to warp doubtful and ambiguous expressions to a perverted sense, which makes the charge not the crime of others, but the construction of your own malice; nor is it allowed to draw conclusions from allowed premises, which those, who lay down the premises, utterly deny, and disown as their conclusions. For this, though it may possibly be good logic, cannot by any possibility whatsoever be a fair or charitable representation of any man, or any set of men. It may show the erroneous nature of principles, but it argues nothing as to dispositions and intentions. Far be such a mode from me. A mean and unworthy jealousy it would be to do any thing upon the mere speculative apprehension of what men will do. But let us pass by *our* opinions concerning the danger of the church. What do the gentlemen themselves think of that danger? They, from whom the danger is apprehended, what do they declare to be their own designs? What do they conceive to be their own forces? and what do they proclaim to be their means? Their designs they declare to be to destroy the established church, and not to set up a new one of their own. See Priestley. If they should find the state stick to the church, the question is, whether they love the constitution in *state* so well, as that they would not destroy the constitution of the state in order to destroy that of the church. Most certainly they do not.

The foundations, on which obedience to governments is founded, are not to be constantly discussed. That we are here, supposes the discussion already made and the dispute settled. We must assume the rights of what represents the public to controul the individual, to make his will and his acts to submit to their will, until some intolerable grievance shall make us know that it does not answer its

end, and will submit neither to reformation nor restraint. Otherwise we should dispute all the points of morality, before we can punish a murderer, robber, and adulterer; we should analyze all society. Dangers by being despised grow great; so they do by absurd provision against them. *Stulti est dixisse non putâram.* Whether an early discovery of evil designs, an early declaration, and an early precaution against them, be more wise than to stifle all inquiry about them, for fear they should declare themselves more early than otherwise they would, and therefore precipitate the evil — all this depends on the reality of the danger. Is it only an unbookish jealousy, as Shakespeare calls it? It is a question of fact. Does a design against the constitution of this country exist? If it does, and if it is carried on with increasing vigour and activity by a restless faction, and if it receives countenance by the most ardent and enthusisastic applauses of its object, in the great council of this kingdom, by men of the first parts, which this kingdom produces, perhaps by the first it has ever produced, can I think that there is no danger? If there be danger, must there be no precaution at all against it? If you ask whether I think the danger urgent and immediate, I answer thank God, I do not. The body of the people is yet sound, the constitution is in their hearts, while wicked men are endeavouring to put another into their heads. But if I see the very same beginnings, which have commonly ended in great calamities, I ought to act as if they might produce the very same effects. Early and provident fear is the mother of safety; because in that state of things the mind is firm and collected, and the judgment unembarrassed. But when the fear, and the evil feared, come on together, and press at once upon us, deliberation itself is ruinous, which saves upon all other occasions; because when perils are instant, it delays decision; the man is in a flutter, and in a hurry, and his judgment is gone, as the judgment of the deposed king of France and his ministers was gone, if the latter did not premeditately betray him. He was just come from his usual amusement of hunting, when the head

of the column of treason and assassination was arrived at his house. Let not the king; let not the Prince of Wales, be surprised in this manner. Let not both Houses of Parliament be led in triumph along with him, and have law dictated to them by the constitutional, the revolution, and the Unitarian Societies. These insect reptiles, whilst they go on only caballing and toasting, only fill us with disgust; if they get above their natural size, and increase the quantity, whilst they keep the quality, of their venom, they become objects of the greatest terror. A spider in his natural size is only a spider, ugly and loathsome; and his flimsy net is only fit for catching flies. But, good God! suppose a spider as large as an ox, and that he spread cables about us, all the wilds of Africa would not produce any thing so dreadful —

Quale portentum neque militaris
Daunia in latis alit esculetis,
Nec Jubæ tellus generat leonum
Arida nutrix.

Think of them, who dare menace in the way they do in their present state, what would they do if they had power commensurate to their malice. God forbid I ever should have a despotic master — but if I must, my choice is made, I will have Louis the XVIth rather than Monsieur Bailly, or Brissot, or Chabot; rather George the IIId, or George the IVth, than Dr. Priestley or Dr. Kippis, persons, who would not load a tyrannous power by the poisoned taunts of a vulgar low-bred insolence. I hope we have still spirit enough to keep us from the one or the other. The contumelies of tyranny are the worst parts of it.

But if the danger be existing in reality, and silently maturing itself to our destruction, what, is it not better to take *treason* unprepared, than that *treason* should come by surprise upon us, and take us unprepared? If we must have a conflict, let us have it with all our forces fresh about us, with our government in full function and full strength, our troops uncorrupted, our revenues in the legal hands, our arsenals filled and possessed by government; and not

wait till the conspirators, met to commemorate the 14th of July, shall seize on the Tower of London and the magazines it contains, murder the governor, and the Mayor of London, seize upon the king's person, drive out the House of Lords, occupy your gallery, and thence, as from an high tribunal, dictate to you. The degree of danger is not only from the circumstances, which threaten, but from the value of the objects, which are threatened. A small danger menacing an inestimable object is of more importance than the greatest perils, which regard one, that is indifferent to us. The whole question of the danger depends upon facts. The first fact is, whether those, who sway in France at present, confine themselves to the regulation of their internal affairs, or whether upon system they nourish cabals in all other countries, to extend their power by producing revolutions similar to their own. 2. The next is, whether we have any cabals formed or forming within these kingdoms, to co-operate with them for the destruction of our constitution. On the solution of these two questions, joined with our opinion of the value of the object to be affected by their machinations, the justness of our alarm, and the necessity of our viligance must depend. Every private conspiracy, every open attack upon the laws is dangerous. One robbery is an alarm to all property; else I am sure we exceed measure in our punishment. As robberies increase in number and audacity, the alarm increases. These wretches are at war with us upon principle. They hold this government to be an usurpation. See the language of the department.

The whole question is on the *reality* of the danger. Is it such a danger as would justify that fear, *qui cadere potest in hominem constantem et non metuentem?* This is the fear, which the principles of jurisprudence declare to be a lawful and justifiable fear. When a man threatens my life openly and publicly, I may demand from him securities of the peace. When every act of a man's life manifests such a design stronger than by words, even though he does not make such a declaration, I am justified in being on my

guard. They are of opinion, that they are already one-fifth of the kingdom. If so, their force is naturally not contemptible. To say that in all contests the decision will of course be in favour of the greater number, is by no means true in fact. For, first, the greater number is generally composed of men of sluggish tempers, slow to act, and unwilling to attempt; and, by being in possession, are so disposed to peace that they are unwilling to take early and vigorous measures for their defence, and they are almost always caught unprepared.

> Nec cõiere pares: alter vergentibus annis
> In senium, longoquè togæ tranquillior usu,
> Dedidicit jam pace ducem; ——
> Nec reparare novas vires, multumque priori
> Credere fortunæ. Stat magni nominis umbra. *

A smaller number, more expedite, awakened, active, vigorous and courageous, who make amends for what they want in weight by their superabundance of velocity, will create an acting power of the greatest possible strength. When men are furiously and fanatically fond of an object, they will prefer it, as is well known, to their own peace, to their own property, and to their own lives; and can there be a doubt in such a case that they would prefer it to the peace of their country? Is it to be doubted that, if they have not strength enough at home, they will call in foreign force to aid them? Would you deny them *what is reasonable* for fear they should? Certainly not. It would be barbarous to pretend to look into the minds of men. I would go further, it would not be just even to trace consequences from principles, which, though evident to me, were denied by them. Let them disband as a faction, and let them act as individuals; and when I see them with no other views than to enjoy their own conscience in peace, I for one shall most cheerfully vote for their relief.

* Lucan, l. 129 to 135.

A tender conscience, of all things, ought to be tenderly handled; for if you do not, you injure not only the conscience, but the whole moral frame and constitution is injured, recurring at times to remorse, and seeking refuge only in making the conscience callous. But the conscience of faction, the conscience of sedition, the conscience of conspiracy, war, and confusion * * * * * *

Whether any thing be proper to be denied, which is right in itself, because it may lead to the demand of others, which it is improper to grant; — abstractedly speaking, there can be no doubt that this question ought to be decided in the negative. But as no moral questions are ever abstract questions, this, before I judge upon any abstract proposition, must be embodied in circumstances; for since things are right or wrong, morally speaking, only by their relation and connexion with other things, this very question of what it is politically right to grant depends upon this relation to its effects. It is the direct office of wisdom to look to the consequences of the acts we do; if it be not this, it is worth nothing, it is out of place and of function; and a downright fool is as capable of government as Charles Fox. A man desires a sword; why should he be refused? a sword is a means of defence, and defence is the natural right of man, — nay, the first of all his rights, and which comprehends them all. But if I know that the sword desired is to be employed to cut my own throat, common sense, and my own self-defence, dictate to me, to keep out of his hands this natural right of the sword. But whether this denial be wise or foolish, just or unjust, prudent or cowardly, depends entirely on the state of the man's means. A man may have very ill-dispositions, and yet be so very weak as to make all precaution foolish. See whether this be the case of these dissenters, as to their designs, as to their means, numbers, activity, zeal, foreign assistance.

The first question to be decided, when we talk of the church's being in danger from any particular measure is, whether the danger to the church is a public evil; for to those, who think that the national church establishment is

itself a national grievance, to desire them to forward or to resist any measure upon account of its conducing to the safety of the church, or averting its danger, would be to the last degree absurd. If you have reason to think thus of it, take the reformation instantly into your own hands whilst you are yet cool, and can do it in measure and proportion, and not under the influence of election tests and popular fury. But here I assume that by far the greater number of those, who compose the House, are of opinion, that this national church establishment is a great national benefit, a great public blessing, and that its existence or its non-existence of course is a thing by no means indifferent to the public welfare: then, to them its danger or its safety must enter deeply into every question, which has a relation to it. It is not, because ungrounded alarms have been given, that there never can exist a real danger; perhaps the worst effect of an ungrounded alarm is to make people insensible to the approach of a real peril. Quakerism is strict, methodical, in its nature highly aristocratical, and so regular, that it has brought the whole community to the condition of one family; but it does not actually interfere with the government. The principle of your petitioners is no passive conscientious dissent on account of an overscrupulous habit of mind; the dissent on their part is fundamental, goes to the very root; and it is at issue not upon this rite or that ceremony, on this or that school opinion, but upon this one question of an establishment, as unchristian, unlawful, contrary to the Gospel, and to natural right, popish and idolatrous. These are the principles violently and fanatically held and pursued — taught to their children, who are sworn at the altar like Hannibal. The war is with the establishment itself, no quarter, no compromise. As a party, they are infinitely mischievous; see the declarations of Priestley and Price — declarations, you will say, of *hot* men. Likely enough — but who are the *cool* men, who have disclaimed them? not one, — no, not one. Which of them has ever told you, that they do not mean to *destroy the church*, if ever it should be in their

power? Which of them has told you, that this would not be the first and favourite use of any power they should get? not one, — no, not one. Declarations of hot men! The danger is thence that they are under the *conduct* of hot men; *falsòs in amore odia non fingere.*

They say, they are well affected to the state, and mean only to destroy the church. If this be the utmost of their meaning, you must first consider whether you wish your church establishment to be destroyed; if you do, you had much better do it now in temper, in a grave, moderate, and parliamentary way. But if you think otherwise, and that you think it to be an invaluable blessing, a way fully sufficient to nourish a manly, rational, solid, and at the same time humble piety; if you find it well fitted to the frame and pattern of your civil constitution; if you find it a barrier against fanaticism, infidelity, and atheism; if you find that it furnishes support to the human mind in the afflictions and distresses of the world, consolation in sickness, pain, poverty, and death; if it dignifies our nature with the hope of immortality, leaves inquiry free, whilst it preserves an authority to teach, where authority only can teach, *communia altaria, æque ac patriam, diligite, colite, fovete* * * *

The House divided on Mr. Fox's motion: Yeas 63. Noes 142. So it passed in the negative.

MR. FOX'S AMENDMENTS TO THE ADDRESS ON THE KING'S SPEECH AT THE OPENING OF THE SESSION.

December 13.

THE session was this day opened with a speech from the throne. An address, in approbation thereof, having been moved by Sir James Saunderson, the Lord Mayor of London, and seconded by Mr. Wallace, Mr. Fox, after some general obser-

vations, and the usual apology of considering the king's speech as that of the ministers, declared it to be his firm opinion, that every fact asserted in the speech was false, and all its insinuations unfounded; that no insurrection existed; and that the alarm, whatever it might be, was not occasioned by any actual circumstances that could justify reasonable apprehension, but by the artful designs and practices of ministers. He concluded with moving, that the following words be substituted in the room of those moved by Sir James Saunderson—"To express to his majesty our most zealous attachment to the excellent constitution of this free country, our sense of the invaluable blessings which we derive from it, and our unshaken determination to maintain and preserve it: to assure his majesty that, uniting with all his majesty's faithful subjects in these sentiments of loyalty to the throne, and attachment to the constitution, we feel in common with them the deepest anxiety and concern, when we see those measures adopted by the executive government, which the law authorises only in cases of insurrection within this realm: that his majesty's faithful Commons assembled in a manner new and alarming to the country, think it their first duty, and will make it their first business, to inform themselves of the causes of this measure, being equally zealous to enforce a due obedience to the laws on the one hand, and a faithful execution of them on the other." * After the amendment had been supported by Mr. Grey, Mr. Sheridan, and Mr. Thomas Grenville, and opposed by Mr. Windham and Mr. Dundas,

Mr. BURKE rose. He said, that this was indeed a day of trial of the constitution. He agreed with an honourable gentleman in regarding the present as a most momentous crisis, but for different reasons from those which that honourable gentleman had assigned. He congratulated the House on the chief magistrate of the city of London having come forward in a manner so honourable to himself, and could not let slip that occasion of paying a just tribute to the services which the city of London had at different times rendered to the constitution, under whose auspices it

* See Fox's Speeches, Vol. iv. p. 442.

had risen to its present opulence and grandeur. It had distinguished itself by the part which it had acted both at the Restoration and the Revolution. It was sensible how closely liberty and monarchy were connected in this country — that they were never to be found asunder — that they had flourished together for a thousand years — and that from this union had resulted the glory and prosperity of the nation.

While he did justice to the talents and eloquence of a right honourable gentleman, (Mr. Fox,) whom nobody could more highly respect and admire than himself, and whom he should rejoice to see occupying an important situation in the administration of the country, for which he was so well qualified, he could not help remarking, that on the present occasion the right honourable gentleman had taken up a great many invidious points, which might have been spared, without any injury to his argument. He had asserted, that the statement of the existence of an insurrection was a calumny on the country. But did the proclamation say that the whole country was in a state of insurrection? He would ask the right honourable gentleman — whom he could only compare to Cicero — whether, when Cicero affirmed in the senate, that there existed within the walls of Rome itself a conspiracy for burning and destroying that great city, he was guilty of a libel upon the people of Rome, or only upon Catiline? The charge of insurrection made in the proclamation, was not a charge upon the country, but only upon some people in it. But the alarm which had been excited, had been said to be artificial, and had been ranked among the number of false plots. The Popish plot had been brought forward, as affording an instance of a device for the purpose of creating alarm similar to what had been employed on this occasion. But were there no instances of real plots to be found in this country? What was become of the gunpowder plot, and the different plots which were formed against Queen Elizabeth? False plots would never have been believed, if there had not sometimes been true ones.

This reasoning, therefore, against the reality of the alarm which had taken place, was by no means conclusive.

He had been not a little surprised at the violent declamation in favour of liberty, which had fallen from the right honourable gentleman — as if, on the present occasion, liberty was placed on the one hand, and despotism on the other. He, for his own part, declared himself to be, not a defender of ministry or of opposition, but of the country. In France he would affirm there existed no true liberty. As a proof that liberty was enjoyed by us, he would ask, was not life, was not property secure? Was this the case in France, where both were every moment exposed to danger, and where, instead of one Bastile, a Bastile was now erected in every parish? He was one of those who lamented the retreat of the Duke of Brunswick; and he must own, that he thought even a despotism, where life and property were secure, preferable to that state of liberty, where both were continually liable to be invaded. What he dreaded, should French principles be introduced into this country, was, the destruction of the whole order of civil life; not only that we should lose king, lords, and commons, but our property, our wives, every thing that was dear and sacred. Who would wish the morals of the present legislators of France to be introduced into this country? What parent would wish his son to resemble a Marat, a Danton, a Robespierre? Or would he wish him to copy the example of a Petion? Or should he search the deepest recesses of hell, where could he find a more complete model of depravity than Monsieur Egalité?

He would affirm, that there was a faction in this country, who wished to subject it to France, in order that our government might be reformed upon the French system. He would likewise affirm, that the French cherished designs upon this country; that they encouraged this faction, and were disposed to aid them in their views of overturning our constitution. As a proof of this, he would translate from their own gazette the following account of their proceedings:

" The president — " You decreed yesterday, that two deputations of Englishmen should be admitted to the bar. I am going to order it to be opened for them." — The first deputation being admitted, the spokesman addressed the convention as follows:— " Citizens, Legislators! the British and Irish citizens resident at Paris, constantly animated by those principles which have given rise and success to the French revolution, met last Sunday to celebrate the success of your arms, and agreed to present to you their sentiments, and to congratulate you on those events which are so favourable an omen for all people who wish to become free. Receive, then, that pure and fraternal homage of men who bear in their hearts all the principles of that constitution which you are going to give to your country. Hitherto wars have been only undertaken to gratify the ambition and pride of despots. You have taken up arms only to make reason and liberty triumph. We hope the troops of liberty will not lay them down until there shall be no more tyrants or slaves."

The president answered the deputation as republicans. He said, " that royalty in Europe was in the agonies of death; that the declaration of rights now placed by the side of thrones, was a fire which in the end would consume them; and he even hoped that the time was not far distant when France, England, Scotland, and Ireland — all Europe! all mankind! would form but one peaceful family." The second deputation was from the constitutional society of London, and consisted of Joel Barlow and J. Frost, who presented an address, congratulating the French on the revolution they had accomplished, and the success that had attended their arms; expressing a hope at the same time, that other nations would soon follow their example. The deputies added, that they had sent a thousand pair of shoes as a patriotic gift to the soldiers of liberty. The address was signed by Lord Sempill, president, and D. Adams, secretary.

Mr. Burke accompanied the reading of this detail with many remarks. These proceedings, he said, had taken

place on the same day, in which there had been a discussion in the convention respecting the union of Savoy to France. On that occasion, the president had observed, "that nature pointed out this union; that France and Savoy were already connected by physical and moral ties." This gentle people, in adding the country of their neighbours to their own dominions, only follow the mild laws of nature; whenever they have a mind to make an acquisition of territory, they discover their claim to it to be established by physical and moral ties; no doubt they will soon find out the physical and moral connection subsisting between them and this country, though we unfortunately have been separated from them by a violent convulsion. Of those persons who had signed the address from the society for constitutional information, he knew little or nothing, excepting Mr. John Frost. He was notorious; his character, he believed, was pretty well known to both sides of the House; the gentlemen of the treasury particularly had reason to be acquainted with it. If Englishmen had in this manner applied to Louis XVI. to reform our government, and had been favourably received by him, would not this have been considered as an aggression by this country? It was, indeed, a portent and prodigy that Englishmen should not be able to find liberty at home, but should be obliged to seek it elsewhere. What rendered the factious in this country particularly dangerous, was their connection with the band of French robbers and assassins. The French had declared war against all kings, and of consequence against this country, if it had a king. The question now was, not whether we should carry an address to the throne, but whether we should have a throne at all? Mr. Burke concluded with recommending the unanimity so desirable upon this occasion, and with representing the danger which might arise from the progress of French arms, if not speedily resisted. Their power had already become formidable to the whole of Europe, and if we would not have Europe torn from us, it was necessary that we should interpose by the most effectual means to stop their farther career.

The address moved by the Lord Mayor was agreed to, upon a division, by 290 against 50. On the following day, when the report of the address was brought up, Mr. Fox warmly opposed it, and moved an amendment thereto, by inserting these words: "Trusting that your majesty will employ every means of negociation, consistent with the honour and safety of this country, to avert the calamities of war." After Mr. Sheridan had seconded the amendment,

Mr. BURKE rose. He said, that considering it as admitted, that France must not be allowed to open the Scheldt, and that she must also be either induced by negociation, or compelled by arms, to restore the conquests she had made, he thought it a very extraordinary way of effecting either purpose, to represent our internal situation as rotten, and our allies not to be depended on. With regard to our internal situation, he esteemed it far from being rotten, though the constitution was certainly assailed by persons whose activity, if not checked in time, might be likely to endanger it. As to the fidelity of our allies, if it was not now to be relied on, surely the right honourable gentleman who moved the amendment did not take the best mode of confirming it, by acknowledging the sovereignty of, and entering into negociations with, the new republic of France, their most inveterate enemy. But admitting the policy of such negociation, were we sure that the French would come to any reasonable terms with us? And yet this was the contingency for which we were to renounce our present friends, the ancient and established governments in Europe. This would indeed be reducing ourselves to a curious dilemma, and leaving ourselves entirely at the mercy of France, from which country, if any ever expected mercy, they were sure to be disappointed. This abominable government had not yet been recognised by any other power. And what was the peculiar time when we were desired to dispatch an ambassador to them? At the very moment, perhaps, when the merciless savages had their hands red with the blood of a murdered king; thus giving sanction to an act which barbarians would con-

demn, giving currency to the crime of regicide, and affording a preliminary to the murder of our own excellent sovereign.

At present it was only decreed that France was a republic, but of what kind had not been yet certainly determined, nor could any conjecture be formed on it. If he had any merit at all, it was that of having read industriously and attentively; and of course the origin and composition of republics had not escaped him. It was observed, that all dogs went by the same name, though no species of animal contained a greater diversity. Thus it might be said of republics. Those of Holland, Venice, Genoa, &c. differ widely in their governments, yet they were such as ambassadors might be sent to; for they were not regicidal republics, nor republics of confraternity with the seditious and disaffected in every state. France stood alone in the list of republics, and was the only one since the creation that maintained fundamental principles of universal union, seduction, and confraternity. To some it appeared a government of universal conquest, to others of universal anarchy, but to all of universal influence and sway. It bore no resemblance whatever to any of its contemporaries or predecessors—"*Jam nova pestis adest;*" and the right honourable gentleman, in comparing it to other republics, was in the situation of a law serjeant, who pleading in one of the courts, was told by the judge, "Brother, your case does not apply:" to which the serjeant answered, "I know that, my lord, and I wish to heaven it did."

It had for some time been the fashion in that House to quote him as an author, from a book which he had written upon the revolution in France; and in doing so that evening, the right honourable gentleman had fallen into a practice that had been pursued before him by Mr. Mackintosh, and other writers of less eminence—namely, taking a detached passage without explaining it by what followed or went before it. The practical form of a free government, as quoted, did not express fully his ideas of liberty. Definitions might and often had been given, but it would per-

haps be better expressed by a description. What he meant, then, by liberty was, that he should be suffered to enjoy life as long as the Almighty permitted him — that his person should be free while he conformed to the laws of his country — that he should not be disturbed in the exercise of his religion — and that he should be left at the full enjoyment and disposal of his property, whether inherited, or acquired by his industry. If he was protected in the free exercise of all these, as was the case in England, he must think himself in the possession of rational freedom; and this, though not a definition, was at least an inventory of freedom. The Rights of Man, however, were not confined to this, but were founded upon plausible deductions and metaphysical abstractions — true in some parts, and equally false in others. They were like the neck of a drake, blue on one side and black on the other. When the knowledge of these rights was diffused amongst the multitude, he could not but tremble for the consequence; nor indeed could he hear, without emotions of horror, the application made of them to property in frequent discussions on the French revolution. It was this kind of application which caused most of the horrors of the French revolution. [Hear, hear!] He perceived that the House not only approved his sentiments on this subject, but received them with acclamations; yet he could not augur the same success, if he were to preach these doctrines to a beggar. Were he to say to a man, "I have a good house, excellent cattle, fine furniture, pictures, tapestry, laces, plate, and delicious fare, but — you want your dinner;" he was apprehensive that he should find some difficulty in convincing him, that the superfluities recounted ought not to be employed in the relief of his necessities. The times would be truly alarming indeed, when these French notions should prevail in this country, and property suffer the same transfer that it had done in that miserable nation.

On this idea of equality contained in the French system of the Rights of Man might it be accounted for, that in the last and present National Assemblies was not to be found a

man worth a single shilling; or if there happened to be two or three exceptions, they only proved his rule. In the course of frequent conversations with persons of discernment, he had heard it argued, that a government formed of such fellows could have no energy. He, on the contrary, was of a different opinion, and attributed to that indigent condition of their rulers, the successes lately obtained by the French, and the vigour of their proceedings. He appealed to the House, whether their reluctance to a war did not proceed, in some degree, from the care they had for the preservation of their riches. The legislators of France, on the contrary, as they had nothing to lose, so they had little to fear; and had no objection to go to war with the whole world. When the King of Prussia was marching to Paris they were little concerned, and were preparing to escape with the treasures of which they had plundered the people. When threatened with an English war, the cry was nearly the same: "Let them come on," said they; "they have riches and commerce, and we have neither: we may gain something, and can lose nothing." Such were the men who had the power of levying what taxes they pleased upon the people, and of converting the produce to what purposes they pleased.

The extravagance of Anacharsis Cloots, in wishing to embrace China, Quebec, Bulam, and in short all the world, in the confraternity of France, was not peculiar to him, but was also entertained by all the members of the Assembly. This Cloots, he said, was an old acquaintance and correspondent of his, being very respectably introduced to him, and had no small share in producing the French revolution. He was a Prussian by birth, highly conversant in every branch of literature, and much better qualified to act the part of a philosopher than John Frost as a deputy from the people of Great Britain. In June 1790 this man appeared at the bar of the National Assembly, accompanied by men of all nations, Asiatic, African, and European, of which latter the English made no

inconsiderable part. There, as orator of the human race, he invoked for them all the protection and confraternity of France; and this happened on the very day when the Assembly demolished, by a decree, the nobility of France.

Mr. Burke said, that the French republic was *sui generis*, and bore no analogy to any other that ever existed in the world. It therefore did not follow that we ought to recognise it, merely because different powers in Europe had recognised the republic of England under Oliver Cromwell. England did not at that time attempt to turn all the states of Christendom into republics; it did not wage war with sovereigns; it professed no principle of proselytism; and therefore, whatever neighbouring nations might have to expect from her friendship, they had nothing to fear for the existence of thrones. The same might be said of America. But France wanted to make proselytes to her opinions, and turn every government in the world into a republic. If every government was against her, it was because she had declared herself hostile to every government. He knew of nothing to which this strange republic could be compared, but to the system of Mahomet, who with the koran in one hand, and a sword in the other, held out the former to the acceptance of mankind, and with the latter compelled them to adopt it as their creed. The koran which France held out, was the declaration of the rights of man and universal fraternity; and with the sword she was determined to propagate her doctrines, and conquer those whom she could not convince.

He by no means wished to hurry the nation into a war. He wanted to make the people see that France had really declared war against them, and that the two states might be considered as actually engaged in it. France had passed a variety of decrees, every one of which might fairly be considered as a declaration of war against every government. She had resolved to wage an eternal war against kings and kingly government; and had actually received Englishmen at the bar of the convention, whom, in contempt of the king and parliament, she professed to

consider as the representatives of the people of England. Was this no provocation? Was this no attack upon the government of Great Britain? He entreated gentlemen, who were disposed to countenance new doctrines in England, to take warning by the fate of the virtuous Duke de la Rochefoucault. That nobleman of antient lineage, and princely fortune, who was adorned by every virtue, was seduced by the arts of Condorcet to countenance the revolution. He was vested with a high office of magistracy, under the new constitution; and because he was not disposed to go all the lengths of the wicked men who found means to raise themselves to power, he was obliged to fly for his life; he was pursued, and, in the midst of his own tenants, who had experienced the bounty and munificence of his family, was forced from his carriage, from between his mother and his wife, and in their presence inhumanly butchered. To all the well-meaning advocates for new doctrines, he would hold up the bleeding head of the Duke de la Rochefoucault, whom all his virtues could not rescue from the hands of murderers, who feared neither God nor man.

> " Perish the heart that never learn'd to glow
> " For others good, or melt at others woe."

Mr. Burke next touched upon Ireland. He said he was attached to that country, because it had given him birth. To England he was bound by the strongest ties of gratitude and love; and should so great a calamity ever happen as a dispute between the two countries, it was with the latter, which was the country of his adoption, that he would take part. But he feared no such event; the wisdom of the parliament of Ireland would point out the necessity of freeing a great majority of that kingdom from grievances under which they were made to labour, not only without any good to the country, but to its general detriment. In the province of Ulster, he said, the people were chiefly descendants of Scotch and English colonists; they were for the most part protestants, it was true, but at the same time they were

dissenters. In two counties there they were superior in nnmbers to the catholics; but in the other provinces, the latter were ten to one. Upon an average of the whole, the catholics were at least four-fifths of the nation. They were now come forward to demand, not an innovation in the constitution, but a restoration of it; the removal of an innovation. They called for a repeal of two acts of parliament, one of which passed in the beginning of the late reign, which deprived them of the right of voting for members of parliament, which they had enjoyed up to that period; the other in the preceding reign, which deprived them of the right of serving upon juries. These people proceeded in the best possible way to their emancipation, by petitions, and by degrees; they did not ground their demands on the rights of man; if they did, he would certainly resist them; but simply on the right which they had as citizens, to share in the blessings of the existing constitution of their country; and in that light their claims appeared so well founded, as to be, in his mind, irresistible.

Mr. Fox's amendment was negatived without a division.

Mr. Fox's Motion for sending a Minister to Paris, to treat with the Provisional Government of France.

December 15.

ON Saturday, the 15th of December, as soon as the House had returned from presenting their address to his majesty, Mr. Fox rose to make his promised motion; by which, he said, he did not mean to imply any approbation of the conduct of the existing French government, or of the proceedings which had led to the present state of things in France. His object was simply to declare and record his opinion, that it was the true

policy of every nation to treat with the existing government of every other nation with which it had relative interests, without inquiring or regarding how that government was constituted, or by what means those who exercised it came into power. This was not only the policy, but frequently the practice. If we objected to the existing form of government in France, we had as strong objections to the form of government at Algiers; yet at Algiers we had a consul. If we abhorred the crimes committed in France, we equally abhorred the crimes committed in Morocco; yet to Morocco we had sent a consul. By these acts we were neither supposed to approve of the form of government at Algiers, nor of the crimes committed in Morocco. From this motion no opinion was to be implied, but the opinion he had stated. It would have been better, if what he proposed had been done sooner, and there were circumstances that made it less proper now than at an earlier period. But this was not imputable to him. The earliest period was now the best: and this was the earliest opportunity that the meeting of parliament afforded him. It would have been still better, if the British minister had not been recalled from Paris; but had continued there as the ministers of some other courts had done. He concluded with moving, "That an humble address be presented to his majesty, that his majesty will be graciously pleased to give direction, that a minister may be sent to Paris, to treat with those persons who exercise provisionally the functions of executive government in France, touching such points as may be in discussion between his majesty and his allies, and the French nation *." The motion was opposed by Lord Sheffield, Mr. Stanley, Mr. Loveden, Mr. Frederick North, Mr. Jenkinson, the Master of the Rolls, Mr. Windham, Mr. Grant, Sir William Young, Mr. Burke, Sir James Murray, and Mr. Drake; and supported by Mr. M. A. Taylor, Mr. Grey, Colonel Tarleton, Mr. Francis, Mr. Erskine, Mr. Whitbread, Mr. Courtenay, and Mr. Sheridan.

Mr. BURKE bestowed the warmest panegyric on Mr. Jenkinson, Mr. Frederick North, and other young gentlemen who, he said, had gloriously stood forward to resist the growing evils. They inherited all the talents and virtues of their

* See Fox's Speeches, vol. iv. p. 473.

illustrious fathers, whose eloquence had often attracted the admiration of the House. In them he was happy to see that the new doctrines, which menaced destruction to all lovers of peace and order, would find powerful opponents. While they remained in the field of action, armed at all points for the combat, while the patriotism of their fathers animated them in defence of the constitution, while they were emboldened and invigorated by the growing danger, the people need not tremble for the pernicious consequences of the new system of France, accompanied by the threatened argument of the sword. In the formidable phalanx which now appeared the country might repose the greatest confidence. They would dash forward and repel the impending storm. So might it always be! Might there be an eternal succession of talents and principles adverse to these new French doctrines!

> Tumvos, O Tyrii, stirpem et genus omne futurum
> Exercete odiis; cinerique hæc mittite nostro
> Munera: nullus amor populis nec fœdera sunto.
> Litora litoribus contraria, fluctibus undas
> Imprecor, arma armis: pugnent ipsique nepotes.

If called upon in defence of our liberties, the friends of the constitution would enter the lists in battle array: they would oppose the enemy man to man, foot to foot, and shield to shield. He then proceeded to remark on Mr. Erskine's speech, who, he said, always instructed that House, as the ancient philosophers did their pupils, by proposing himself as their example. Concerning the law, the constitution, or the government of France, the learned gentleman, indeed, had said nothing: he was right, for France had no law, no government, no constitution, and therefore he was very properly silent; but, although the French had none, the learned gentleman had a great deal of law, a great deal of government of himself, and an excellent constitution. In his speech there was a great deal of his own, and a great deal from Dr. Johnson, which was a good common place against war. In calling in the aid of Dr. Johnson to en-

force his arguments against a foreign war, the learned gentleman produced a very formidable champion indeed. He was a great and a good man: his virtues were equal to his transcendant talents, and his friendship he valued as the greatest consolation and happiness of his life. It might, however, escape the learned gentleman's memory, that this eminent author, who wrote with such energy against a foreign war, had afterwards, on the memorable rupture between this country and America, summoned all his vigour and eloquence in vindication of a civil war.

Mr. Burke said, that he wished sincerely that hostilities might be avoided; but if our just resentment were fulminated against the assassins who offered us the comforts of fire and sword, a civil war might be prevented in England. The French agents were remarkably active in exciting commotions. The arm of power ought to crush them — a criminal suspension might entail upon our fellow subjects most dreadful disasters. In the mad, wicked, and abominable career of the French, he had fondly hoped that ere now the hand of power would have arrested them; that they would have been brought to condign punishment for their manifold and unparalleled iniquities, and precipitated with a tenfold fury to that place so happily congenial with their horrid dispositions. But it had not as yet pleased Providence to check their progress. They had inundated Savoy and Brabant with their murderous myrmidons; had perhaps before this time commenced hostilities against our allies the Dutch, proudly anticipated a conquest of the whole continent, and menaced Great Britain with their doctrine and their arms. These were serious facts, and demanded immediately the most active exertions. In this dreadful dilemma were we to abandon government? No; let us strengthen their hands; let us teach a gang of homicides and regicides what they have to expect from a dignified people, emulous of each other in the cause of true liberty.

Mr. Burke lamented, that whenever the subject of France came under discussion, he was annoyed and singled

out for acrimony and invective. He defended government from principle, not interest. "Strange as it may appear to some gentlemen with whom I formerly acted, I affirm," (said he) "in the face of the House and of the country, that I retain, and ever will retain, my independence. I have made no provision for myself or family. We are not in the possession of any office; neither cajoled by the reversion of place, nor by the promise of pension; and yet, because I have warmly expressed my abhorrence of the French doctrines, I am pursued and reviled with all the force of rancour and hostility." But sometimes the best effects had arisen from the worst causes; the evil designs now manifested by a certain description of men assumed features too bold to be mistaken, or passed over in silent contempt. There were assailants of eminence with whom it was no disgrace to grapple. Whenever invited to the combat, he would collect all his fortitude, and obey the summons. His hardihood might, perhaps, be eclipsed in the conflict; but he would convince the world that he possessed resolution. By whom were we annoyed? By Frost, whom we all knew; by Sempill, whom he had not the honour of knowing; perhaps the opposite gentlemen were well acquainted with him; by Joel — Joel (the prophet) of whom he had heard. These were the respectable gentlemen — the gods — the *dii minorum gentium* — who threatened to lay our capital and constitution in the same ruin.

Why have the French, who cherish and protect the traitors, offered to aid and abet the downfal of our government? Because the unfledged republicans have determined to wage war against every monarchy. Having a king who commands the affections of his people, the criminality on our part is unpardonable in their eyes. Kings are anointed with oil — the new sovereignty of the people with blood! The recent massacres, at which all Europe revolted, heightened this striking likeness; and none but the murderers themselves could help deploring the shocking barbarities, which exceeded all ancient and modern flagitious-

ness. Those who were advocates for sending an ambassador to Paris ought seriously to reflect in what an aukward predicament they placed such a gentleman. They appointed an ambassador to a people who had no government, no administration; and who had denounced the most implacable hatred against all kings! But, say they, ambassadors have been sent thither from other potentates. Be it so. Let them receive ambassadors from all quarters of the globe; from Capadocia, from Pergamus, from America, from Abyssinia. Let all these congratulate each other on their agreeable and enviable residence. But let no ambassador go thither from Great Britain. If we condescended to acknowledge them by sending an ambassador, might they not insult him by saying, Who sent you? The king or the people of England? The king, most certainly, answers the ambassador. The king! Return from whence you came: we never sent for you: we have passed an irrevocable declaration against all tyranny. And thus, if the motion were agreed to, we should jostle in the dark, and expose ourselves to the insolence of the basest of mankind — monsters who outraged every law, human and divine.

The right honourable gentleman (Mr. Fox) had justified the incursion of Dumourier into Brabant, on the principle of retaliation for the invasion of the combined armies. Admirable reasoning! Thus we were not only to guarantee their new liberty by an ambassador, but allow them the peaceable possession of the Austrian Netherlands, and acknowledge their right to open the Scheldt. All these acquisitions — Holland, the whole continent, and much more — were we to grant them, by way of costs and damages! Thus the laws of nature superseded the laws of nations; and Great Britain, in her turn, would be left to the mercy of the honest and innocent republicans of France! If a treaty opposed their ambition, they immediately affirmed, that it was contrary to the laws of nature; and reduced every moral obligation to the same levelling principle. Mr. Burke made the following ludicrous ob-

jection to the proposed negociation: — If, when the British ambasador appears at the bar of the convention, his commission, among other things, happened to state, "George the Third, by the grace of God," would not that pious assembly be instantly convulsed with laughter? The president, Robespierre, and Marat, sworn enemies to kings, would scarcely be able to keep their indignation within bounds. On the one side, citizen Frost would inflame their resentment; and on the other, citizen Paine would proceed to denounce us. But, say some of the supporters of the motion, what right have we to enter upon a crusade in the cause of kings? We are safe in this country, and our king reigns in the hearts of his people. The French malady complained of can never disturb our tranquillity — *Et penitus toto divisos orbe Britannos.* Our insular situation, they affirm, is proof against every innovation. They talk as if England were not in Europe. The French savages having so horribly stained Europe, he, for one, should have no objection if they could prove the truth of their assertion; and persuade us to the belief that England was in another quarter of the globe. At the conference with the British ambassador, the members of the convention might ask — Are you the representative of a routed faction who have murdered your king? No! Then we can have no transaction with you. Fill up the measure of our laudable principles, and then we will treat with you. Shocking to think! Perhaps even now the barbarians were embruing their hands in the blood of the unhappy prisoners! Let us look around, and observe their judges. Among others who reflected honour on human nature, were citizen Frost and citizen Paine — men of the most unblemished characters! Being a general lover of new constitutions, and enthusiastically fond of projectors, he was not surprised, that Mr. Erskine had undertaken to plead Paine's cause.

But by whom was the unfortunate king accused? By citizen Paine on the one hand, and citizen Frost on the other. Were these Frenchmen? No. They were not

Frenchmen by birth, but Frenchmen by merit. Thus, France adopted citizens from all nations, and such a group of abandoned and unprincipled citizens as no other nation on the face of the earth would receive. Instead of navigating the Scheldt, these wretches navigated the Styx only; and announced slaughter and destruction to all mankind. Were these the men to whom we purposed to send an ambassador? Were we to petition them for peace? Were we to humble ourselves before Judge Paine? It might perhaps be sarcastically asked, how citizen Franklin, with whom citizen Paine was formerly intimate, came to be acknowledged as an ambassador, and why he (Mr. Burke) connived at such a degradation? The answer was obvious: citizen Franklin had never advised the extirpation of all kings. When the independence of America was acknowledged, all Franklin's crimes were absolved. The difference between these two was great in other respects. Franklin was a native of America: Paine was born in England, and lived under the protection of our laws; but instigated by his evil genius, he conspired against the very country which gave him birth; by attempting to introduce the new and pernicious doctrines of republicanism. During the American war, we heard of no acts of barbarity, no deliberate murders, no dethronement and decapitation of kings. There had appeared more atrocious guilt in France in one day than in America and England in seven years. How could we possibly avoid war, when France had denounced destruction against all the kings of Europe. We were forced, on principles of self-defence, into a confederacy with all the sovereigns of Europe. I say, we are now engaged in actual war. The question consequently is—Will you tamely surrender yourselves to citizen Frost and Paine? Forbid it, Heaven! Forbid it, justice! forbid it, humanity! Yield to traitors to their king? To a nation of murderers? Stain the illustrious pages of our history with such profanation and impiety? May God, in his infinite mercy, add vigour to our arm, and enable us to check the encroachments of those monsters of society!

Mr. Burke concluded a very eloquent but desultory speech with reading, from a slip of paper, a declaration, which he wished to be avowed as the grounds of the conduct of the executive power, in order that the people of England might know, that, if there must be a war, it had arisen from the proceedings of those among themselves, who, by their seditious practices, had provoked it; and that a war with France was necessary for the security of the liberties of England, the interests of Europe, and the happiness of mankind.

The motion was negatived without a division.

ALIEN BILL — FRENCH REVOLUTION.

December 28.

IN the month of December a bill was brought in "for establishing regulations respecting Aliens, arriving in this kingdom, or resident therein, in certain cases." On the second reading, upon the 28th, Mr. Secretary Dundas stated the objects of it. All foreigners arriving in the kingdom were to explain their reasons for coming into this country, to give up all arms, except those commonly used for defence or dress. In their several removals through the country, they were to use passports, by which their actual residence or occasional movements might be manifest, and their conduct easily observed. Those who received eleemosynary support were to be distributed in districts, where they would be more liable to the vigilance of the civil power. Particular attention was to be paid to foreigners who had visited this kingdom within the present year, who should hereafter come without obvious reasons, and be thus more obnoxious to prudent suspicion. The bill was strongly opposed by Mr. Fox*, in reply to whose speech,

Mr. BURKE said, that although party connections were extremely proper for mutual arrangement in private, and

* See Fox's Speeches, Vol. v. p. 2.

convenience of public business, they were seldom fit to become the subject of public debate. No man was more unfit than he was to enter into any discussion of the state of parties. To talk of parties was, he remarked, a matter of particular delicacy, as the confidence of private friendship was often so much intermixed with public duty, that the transaction of parties required a sort of sanctity which precluded any disclosure. This delicacy was particularly increased, when friends, who loved and esteemed one another, were compelled, in consequence of a difference of opinion, to pull different ways, and felt all the distraction natural to virtuous minds in such a situation. If he might be allowed to talk of himself, he might state, that ever since he came into parliament, his doors had been open to all; none had been refused admittance, though the practice had been attended with much inconvenience to himself.

To the allusion about Sinope, he had nothing to answer. The phalanx had sent him, not to Sinope, but in the common phrase, to Coventry. What endeavours had been used to make him odious to the public, and to his private friends, all the world knew. Yet this Sinopian, this dog of Athens, had not barked from his tub. He had violated no principle, he had betrayed no secret, he had not attempted to come between the resolution and the act; and farther he had not to say. With regard to the noble person (the Duke of Portland), in whom the public had a great interest, he should say nothing of his just character. The right honourable gentleman said he had known him for sixteen years: he had known him for twenty-seven; and if, for obvious reasons, they had not lately acted much together, he could say, that their friendship, if not improved, was not impaired. The public had a very great interest in the character of that noble person; his public virtues, the moderation of his sentiments, and the temperance of his private life, had made an impression which would not easily be obliterated.

To the right honourable gentleman (Mr. Fox) he owed much for instruction, for improvement, and example; but

the moment he saw him countenancing the proceedings in France, and approving their principles, no public connection could subsist between them, because they differed systematically and fundamentally. He must say, that any person who had seen the French business in the bud, and who now saw it full blown and nurtured, and yet still wished to maintain any connection between France and this country, must, in every respect, meet with his entire disapprobation. On the present occasion, those who wished to support government, must support it systematically. If it should be requisite to carry on a war, where could a systematical support be more necessary? War was itself a system, and for his part he had made up his mind not to give to ministers a layer of support and a layer of opposition, but to support them systematically. Any other support would be treacherous, as it would only be given to a particular measure by those who, at the same time, were endeavouring to undermine the general credit and character of ministry. If the present state of affairs was such as to threaten not only this country but Europe, with most serious dangers, it was necessary, in order to avert those dangers, to adopt a system. The present bill was itself a strong proof of such a state of affairs, as it originated from circumstances which rendered it necessary to give additional power to the executive government. The strong measure which ministers had been obliged to adopt sufficiently proved the exigence of the crisis; and the bill itself formed part of a systematical support. For his part, he gave credit to ministers for not meaning to betray their master, for not joining with foreign and domestic factions to subvert the constitution. He gave them credit for knowing more facts, from the opportunities afforded by their official situation, than those who had not the same advantage; and therefore, he believed, that in the information which they had given of the danger of the country, they had not put upon the House a designed imposition. He would not say that he could not find other ministers more agreeable to his inclination: he should wish to see

that noble personage whom he had mentioned occupy a distinguished situation in the ministry; but he doubted whether any minister could be found more in the confidence of the crown; which, in the present moment, he considered as a very material point. In a time of war, it was likewise very necessary that ministers should be supported by the House of Commons, and possess the confidence of the people; two advantages which the present ministry enjoyed in a very eminent degree. In speaking of the necessity of pursuing a system upon the present occasion, he would remark, that no country had ever acted so much upon a system as that which we were now called upon to oppose. He would here speak of two great characters, both of the most distinguished abilities, one of whom (Mr. Fox), as having been twice secretary of state for foreign affairs, had a claim to the character of a statesman, and would certainly have proved himself a great one, even if he had never been placed in any official situation. The subject upon which that right honourable gentleman had said much, was France, which had lately appeared in a new, and dangerous light; and on this subject he had certainly made use of a language very different from the policy of our forefathers. France had always been considered as the natural enemy of this country; it was the only nation from which we had any thing to fear, and in this point of view was always to be considered as an object of jealousy and precaution. It was the former policy of this country to maintain a balance of power in opposition to France. With this view it was that they made the old alliance with the House of Burgundy, to which formerly belonged the seventeen provinces, which at present form the republic of the United Provinces, and the Austrian Netherlands. With these provinces, in whatever hands they were, it had been invariably the policy of England to be connected, as furnishing the means of an effectual resistance to the power of France; and for this reason we had always made it a point to prevent even the Emperor to dispose of such of them as belonged to him to any other state.

Since the extinction of the house of Burgundy in the male line, and the dismemberment of its possessions, the house of Austria had always been considered as the natural ally of England, because it was the only one capable of making head against the enormous power of France. During the reign of Joseph the Second, whose unaccountable disposition was not favourable to England, an alliance was formed with Prussia.

'How much, then, must he be surprised, when he heard a great statesman declare that he rejoiced in the defeat of the Emperor and the King of Prussia — the Emperor, the ally of this country — the King of Prussia, connected with it by marriage and by treaty. This, indeed, was a total deviation from the policy of our ancestors — nay, when this great statesman required ministers to interfere to prevent the Duke of Brunswick from entering France, and to join with our natural enemies against our allies and friends. There never were more solid, more substantial, more convincing reasons given for attacking any country, than those given in the manifesto which preceded the attack of the combined armies. The battle of Jamappe the right honourable gentleman had stiled "a glorious victory" — that victory by which France had become mistress of Holland! by which she had obtained possession of the Scheldt, which might now be the occasion of going to war! this glorious victory, in his opinion, was a calamitous defeat to this country. And why was all this exultation expressed? Because those, truly, who were combined against France were despots, and because France itself was a republic. It was indeed a new language, to call the friends and allies of this country despots. But here he begged leave to tell a short story: A very singular parrot was brought to Prince Maurice, which had acquired the gift of language. The prince asked where it lived — it mentioned the place. What was its business — it replied, to call together the chickens, and I do it very well — chuck, chuck, chuck (imitating the cry employed to call chickens.) Now, he must own he considered the parrot that could call together

the chickens, as a much greater statesman than the parrot that could only call out, fool, cuckold, and knave. As to the rejoicing at the success of the French republic, the liberty with which it was attended afforded certainly no great ground for exultation. It was a liberty without property, without honour, without morals, without order, without government, without security of life. In order to gain liberty they had forfeited order, and had thus forfeited every degeee of freedom. They had violated the law of nations by a decree, declaring war against all governments, and forcing those countries, into which their armies should enter, to form a constitution similar to their own. In talking of the English nation, they talked of the sovereignty of the people: the constitution of this country knew no such sovereignty; the king was sovereign of the Lords and of the Commons: the King, Lords, and Commons, were the representatives of the country at home; the king was its only representative abroad. They talked of the nation: we knew of no nation as a distinct body from the representative powers. We talked indeed of the people, but the sovereignty of the people was a phrase not recognised by law, and inconsistent with our constitution.

Mr. Burke then animadverted at some length on the decree made by the National Convention upon the report of M. Cambon. The decree was preceded by a curious declaration. "The National Convention, after having heard the report of the United Committees of finance, war, and diplomacy, faithful to the principles of the sovereignty of the people, which will not permit them to acknowledge any institution derogatory from it," &c. — Here, Mr. Burke insisted, was a direct denunciation of war against Great Britain. The National Convention will not acknowledge any institution derogatory from the sovereignty of the people. The decree contained twelve articles, the first evinced the intentions of the National Convention, "to abolish all taxes, nobility, and every privilege; to declare to the inhabitants of all countries, that they bring with them peace, succour, fraternity." The

system of fraternizing was to be propagated by the sword, and if any nation wished to adhere to its old maxims, these regenerators were to cram this fraternity down their throats, and to force them to swallow the dose, however nauseous it might be to them. The fourth article authorised the republic to seize all goods belonging to the treasury, the prince, his favourers, adherents, or satellites. A pretty ample word of confiscation the last was! The sixth article appointed commissioners to fraternize the conquered nation. The seventh provided for the payment of the expences incurred by the republic, in giving fraternity to any nation. This sufficiently evinced the resolution of the French not to fraternize mankind gratis. Under the pretext of giving full liberty to those people, they sent their commissioners to take care that the decree should be fulfilled; and authorised the levying of contributions, in order to defray their own expences; thus exhibiting a more arbitrary and oppressive conduct, even than those whom they affected to call despots, who had on several occasions respected the constitution of those cities which they had invaded, and who had left the different classes of citizens in possession of their privileges.

But he should now read to the House, a paper in which this country was still more deeply interested. Mr. Burke then proceeded to read a translation of the report of the French minister, on the situation of France with respect to England. Upon that passage which mentions the reciprocity of good dispositions between the people of the two nations, he remarked that this was a serious fact which deserved to be attended to. This report, he observed, mentions agents not acknowledged by the court, whom they kept in England: there was one minister whom he knew, M. Chauvelin, who had been minister from the King of France, but who consequently was not now acknowledged. With respect to the ministers having had communications with any such agents, it might be necessary, from political causes, for ministers to have communications with the worst characters; but surely that these agents were

numerous, was matter of serious alarm, as long as the nature of their mission, and the purposes for which they were employed, remained unknown. What answer does the French minister give to the arguments employed by our court against the opening of the Scheldt? Their answer is founded on the rights of nature and on the principles of justice and liberty, which the French nation have consecrated: the only consecration, he remarked, which they had made. When our ministers alleged the positive engagements of treaty, it was replied, that treaties extorted by avarice and consented to by despotism, were no longer binding. So, by this means they got rid of the law of nations, and the obligation of treaties. On the passage which relates to their intention of making a solemn appeal to the English nation, he remarked that they passed by the king, the only representative which this country knew in its transactions with foreign powers. This was exactly conformable to the spirit of their decree of the 19th of December, which had a direct tendency to excite rebellion among the subjects of every government. The conduct of the French, he remarked, in levying contributions on those people whom they had deprived of all their privileges, under pretext of defraying their own expences, resembled that of an attorney who should bring in a bill of costs after he had stripped his client of all his property. From this account of expences, he trusted they would deduct the thousand pair of shoes which had been sent them from England as a first subsidy, from those who wished to adopt their constitution in this country. The French when they were slaves had wooden shoes — now that they were free they had no shoes at all. The liberality of their English friends however promised to supply the defect. He defied any one to mention instances of such excesses under any despotism in so short a space of time, as had taken place under this new government of French freedom. During thirty years of the reign of the Empress of Russia, there had not been committed so many cruelties as had been perpetrated in France within one week. No such instances

of arbitrary imprisonment had occurred under the reign of the King of Prussia, as might be found in the transactions of every French municipality. Every man's house was his bastile, and nothing in the old government could be found to equal the atrocity of those proceedings, which had taken place under the sanction of the new government of French freedom.

Mr. Burke next adverted to the system of atheism, as now avowed in France. To prove this, he quoted several passages from a speech of one Jacob Dupont, to the national convention, in which he denied the existence of a God, and declared that the people would never be thoroughly ripe for the "holy doctrine of insurrection and opposition to tyranny, if in the primary schools the rising generation should be taught any thing about God. He concluded, that the Christian religion being a monarchical one, preaching subjection and obedience to God, ought not to be suffered in a republic; and that all the altars raised to religion, and to the Almighty, ought to be overturned, and none suffered to exist in France, but the sacred altar of liberty." Some murmurs being heard in the assembly, on account of this abominable doctrine, they were drowned by the loud applauses of the majority of the members. This daring man observed, that some people might imagine that a priest was useful to a man in his last moments; this however he denied; and to such he pointed out the example of Condorcet closing the eyes of d'Alembert; in other words, one atheist closing the eyes of another. He said that the brave Marseillois would not have been so well qualified for the glorious deeds of the 10th of August, if they had had the weakness to believe in the existence of a God. The man who had uttered these blasphemies, so far from having been disavowed by the assembly, was appointed one of a committee instituted for the purpose of drawing up a plan of national education; and the only difference of opinion among the members was, which plan would be most economical, that which proscribed the existence of a God, or that which admitted it. Mr. Burke described the be-

nefits which society in general derived from the morality founded upon the belief of the existence of a God, and the comforts which individuals felt in leaving this world, in the hope of enjoying happiness in the next. He mentioned the church of St. Genevieve at Paris, one of the finest buildings in the world, which was now called the French Pantheon, because all the statues of the ancient gods and heroes of antiquity were to be taken from Rome, and deposited in that famous temple; there strangers from all quarters were to be instructed in the best mode of destroying the government and religion of their respective countries; there they were to be taught how to lead men on imperceptibly from crime to crime, from murder to murder. The philosophers of old used to apply the origin of every thing to God — *à Jove principium.* But the modern French philosophers would begin by saying, that every thing had been made by nothing; and that the idea of a God was weak, childish, and absurd, and unbecoming a true republican. The trees of liberty were to be the only altars before which the nations were to kneel.

> " And all about old stockes and stubs of trees,
> Whereon nor fruit nor leaf was ever seen,
> Did hang upon the ragged rocky knees,
> On which had many wretches hanged beene,
> Whose carcases were scattered on the greene,
> And throwne about the cliffs.

These trees of liberty, he doubted not, would soon be without fruit or leaf; and it would be said, that on them " Had many wretches hanged beene." Thus, after having brought so many calamities on individuals, they wished to deprive them of their last consolation; they wished to deprive the pious and penitent of their sole refuge, and, if possible, to extinguish the idea, that there is a God who will punish tyrants and oppressors, and who will reward and comfort suffering virtue. Thus, after having made men miserable in life, they wished also to make them despair in death, and consign them to all the horrors of a

gloomy annihilation. Such were the principles upon which they were to form their youth, and train them to the commission of crimes, by taking away from them the salutary restraints of religion! For his part, he was determined to wage eternal war with such abominable principles, which would drive morality out of the world, and cut asunder the bonds which unite man to man, and the creature to his Creator.

Adverting, lastly, to the bill immediately before the House, he said, he would give it his most cordial support, as being calculated to keep out of England those murderous atheists, who would pull down church and state; religion and God; morality and happiness. The extraordinary power which it would give ministers was necessary, and even proved that the people who gave it were free; for if the crown possessed such power in time of peace, it would be too great for liberty; and if they had not more in time of war than was necessary in time of peace, they would not have enough for the public safety. Where the crown had its power enlarged or diminished by the people, according to times and circumstances, there the people could not be justly said to live under despotism, but to be perfectly free. It had been said, on a former occasion, that there were only nineteen persons at present in the kingdom likely to be affected by the bill; but when it was considered that they were murderers and atheists, the number might be said to be very great; they exceeded by many the whole of the royal family, whom they might perhaps be commissioned to murder. Besides, they might take apprentices to the trade of blood; and then God only could tell where their numbers would end! The persons by whom so many murders had been committed in France never exceeded two hundred; though their assistants and abettors amounted to many thousands; but those believed that there was no God; and therefore people ought not to be at their ease because we had at present only nineteen of them among us. He mentioned the circumstance of three thousand daggers having been bespoke at Birmingham by

an Englishman, of which seventy had been delivered. It was not ascertained how many of these were to be exported, and how many were intended for home consumption [Here Mr. Burke drew out a dagger which he had kept concealed, and with much vehemence of action threw it on the floor.] This, said he, pointing to the dagger, is what you are to gain by an alliance with France: wherever their principles are introduced, their practice must follow. You must guard against their principles; you must proscribe their persons. He then held the dagger up to public view, which he said never could have been intended for fair and open war, but solely for murderous purposes. It is my object, said he, to keep the French infection from this country; their principles from our minds, and their daggers from our hearts. I vote for this bill, because I consider it the means of saving my life and all our lives, from the hands of assassins. I vote for it, because it will break the abominable system of the modern Pantheon, and prevent the introduction of French principles and French daggers. When they smile, I see blood trickling down their faces; I see their insidious purposes; I see that the object of all their cajoling is — blood! I now warn my countrymen to beware of these execrable philosophers, whose only object it is to destroy every thing that is good here, and to establish immorality and murder by precept and example —

"Hic niger est hunc tu Romane cavето."

KING'S MESSAGE RESPECTING THE DECLARATION OF WAR BY FRANCE.

February 12. 1793.

ON the 11th of February, Mr. Secretary Dundas presented the following Message from his majesty:

"G. R.

"His majesty thinks proper to acquaint the House of Commons, that the assembly now exercising the powers of government in France, have, without previous notice, directed acts of hostility to be committed against the persons and property of his majesty's subjects, in breach of the law of nations, and of the most positive stipulations of treaty; and have since, on the most groundless pretences, actually declared war against his majesty and the United Provinces. Under the circumstances of this wanton and unprovoked aggression, his majesty has taken the necessary steps to maintain the honour of his crown, and to vindicate the rights of his people; and his majesty relies with confidence on the firm and effectual support of the House of Commons, and on the zealous exertions of a brave and loyal people, in prosecuting a just and necessary war; and in endeavouring, under the blessing of Providence, to oppose an effectual barrier to the farther progress of a system which strikes at the security and peace of all independent nations, and is pursued in open defiance of every principle of moderation, good faith, humanity, and justice. — In a cause of such general concern, his majesty has every reason to hope for the cordial co-operation of those powers who are united with his majesty by the ties of alliance, or who feel an interest in preventing the extension of anarchy and confusion, and in contributing to the security and tranquillity of Europe."

On the following day, Mr. Pitt entered into an examination of the French declaration, and moved an address in answer to his majesty's message. Mr. Fox opposed the address, and moved the following amendment: — "That we learn, with the utmost concern, that the assembly, who now exercise the powers of government in France, have directed the commission of

acts of hostility against the persons and property of his majesty's subjects, and that they have actually declared war against his majesty and the United Provinces: that we humbly beg leave to assure his majesty, that his majesty's faithful Commons will exert themselves with the utmost zeal in the maintenance of the honour of his majesty's crown, and the vindication of the rights of his people; and nothing shall be wanting on their part that can contribute to that firm and effectual support which his majesty has so much reason to expect from a brave and loyal people, in repelling every hostile attempt against this country, and in such other exertions as may be necessary to induce France to consent to such terms of pacification as may be consistent with the honour of his majesty's crown, the security of his allies, and the interests of his people *." After the amendment had been opposed by Mr. Secretary Dundas, and supported by the Hon. P. C. Wyndham,

Mr. BURKE rose. He began with declaring, that, in his opinion, his majesty's ministers had so clearly, so satisfactorily, and so completely justified their conduct in regard to the war, that he thought it unnecessary to add any thing in vindication of that measure. So much, however, had been thrown out, in the course of the speech of the right honourable gentleman touching the acknowledged policy and fundamental principles of that House, that, notwithstanding the lateness of the hour and his own want of strength, he had to request the attention of the House. It must have occurred to a gentleman possessing such clear, perceptive powers, as the right honourable gentleman who moved the amendment, that an attempt to reconcile discordant parts, and connect contradictory opinions, served only to confound them.

The right honourable gentleman had, on a former occasion, lamented the smallness of his party, and it now seemed as if that party endeavoured to make amends for the smallness of their numbers by the discordancy of their

* See Fox's Speeches, Vol. v. p. 27.

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voices. He imagined some of them would find it difficult to account for their conduct in opposing the measures of ministers on the present critical occasion. In their censures on France gentlemen had shewn a great deal of dexterity; but it certainly had too much the appearance of stratagem. The right honourable gentleman had complained bitterly of the misrepresentation of his expressions in that House. To him it appeared very extraordinary how a person of talents, so clear, so powerful, and so perspicuous, could possibly be misunderstood — how a person who took so much pains by repetition, and going over the same grounds again and again, to bring his superior powers to the low level of the vulgar eye, could possibly be subject to misrepresentation — how a gentleman, whose friends out of doors neglected no human art to display his talents to their utmost advantage, and to detail his speeches to the public in such a manner, that he, though a close observer of the right honourable gentleman, had never been able to recollect a single idea of his that had escaped the industrious attention of his friends, while those of a right honourable friend of his (Mr. Windham), whose abilities were equal to his virtues, were so mangled and so confused, in the reports that were made of them, as to be utterly unintelligible to the public. That the right honourable gentleman should be misrepresented or misunderstood, under such circumstances, was hard indeed. The right honourable gentleman had said, that he hoped he was not reputed an advocate for France. To this he would say, that if the cause of France was an honest cause, it was justice to this country, and to mankind, to undertake her defence. The true skill of an advocate was, to put forward the strong part of his client's case, and gloss over or hide the weak; to exhibit all its right in the brightest point of view, and palliate the wrong; when he could no longer palliate, to contrive that the punishment should be as slight as possible, or to bring his writ of error, and by every quirk evade it as well as he could; and no man possessed that power in a greater degree than the right honourable gen-

tleman. To his speeches he always attended with admiration and respect. That which he had just heard he could not help estimating less highly, seeing that he had read every part of it in Brissot's speeches in the National Convention, one part only excepted, and that was the part in which the right honourable gentleman had asserted, "that France had used every means to conciliate the regards and good will of Great Britain."

The right honourable gentleman had taken great pains to acquit himself, and apologise for his vehement endeavours to exculpate France from the charge of aggression. He professed that he was almost at a loss to see what it was that made him so prompt to exculpation. If France meant nothing but what was right, and England nothing but what was wrong, he certainly owed no apology for the part he had taken in her cause. But to take the right honourable gentleman's speech in a serious view, it insinuated that the charge of the French was, that the king of Great Britain had determined on war against the sense of his ministers, against the sense of the parliament, and against the sense of the people, in order to augment his own power. If this was the case, ministers had betrayed their country by their acquiescence, and it was the duty of the House to address the king to remove them, and put into their places those whom they thought more fit for advice, more fit to do the duty of a minister, and more likely to possess the confidence of the nation, if such there were.

The right honourable gentleman had contended, that when ministers brought the nation into a war, they should declare how they intended to prosecute it, to what length they intended to carry it, and what the object of it was. For his part, he had never heard or read of any such principle, or of any such practice. The first question he conceived to be, was, whether there was just cause or foundation for the war? The second, how it should it be carried on to the greatest effect? He said, that in no instance whatever had any power, at the commencement of a war, declared what period was intended to end it, what means

to carry it on, or what the object of it was. It was contrary to the policy of this and every other country; it was never heard of. In this, and in every case of the kind, the common object of the alliance should be pursued to gain the grand end. War had been declared by the French; but they had not declared that they did not intend the ruin, the destruction, and total subversion of this country and every establishment in it. Was it pretended that they had done, in declaring war, that which gentlemen had prescribed as the duty of this country? No; they declared war with the professed intention to bring it, in the most formidable shape, attended with insurrection and anarchy, into the bowels of this country, to strike at the head of the Stadtholder, and to put no limits to their views in the war; while gentlemen would have Britain cramped and tied by a premature declaration of her object.

As to the sentiments of the right honourable gentleman respecting the declaration of a specific object of the war, as well as the delicacy of interfering in the internal government of France, were they adopted by the House, this should be their language — "France! you have endeavoured to destroy the repose of all the countries of Europe, and particularly of England: you have reduced your own country to anarchy and ruin, and murdered your king; nevertheless, you may be assured, that, however horrible your crimes, though to the murder of your king you should add that of his infant son, his unfortunate queen and sister, and the whole remains of his family, not one hair of your heads shall be hurt. You may war against us, threaten us with destruction, and bring ruin to our very doors; yet shall you not be injured." Was ever, he exclaimed, such a declaration made in such circumstances? Much pains had been taken by the right honourable gentleman to make light of the power of France, and to persuade the House that there was nothing to be feared from it. He would answer this by shewing what the right honourable gentleman had said on a former occasion. Here Mr. Burke began to read a part of a speech spoken by

Mr. Fox on the commercial treaty, strongly demonstrative of the necessity of keeping down the overgrown power of France—[The Speaker called Mr. Burke to order; it being disorderly to read any debate on a former occasion. Mr. Burke said he would beg leave to read from a pamphlet in his hand. The House called Read! read! Here he read from a speech of Mr. Fox, that the effect of all our wars had been carried on with a view to repress the power of France, and to support all the other powers of Europe against her; that France only changed her means, but that her ends were ever the same. — The Speaker again interrepted Mr. Burke, and requested that he would abstain from reading, as he knew it was against the orders of the House.] Mr. Burke said he could not but lament that the rules of the House sometimes weakened the force of argument; but he considered order to be so far more necessary than argument, that he would willingly forego the latter to maintain the former. To return, therefore, to his argument, without the conclusive aid he should derive from the right honourable gentleman's own language, in the book in his hand, he contended, that the whole body of policy of this country for ages was, that whatever country was the enemy of France was naturally the ally of Great Britain. If that opinion was founded in true policy before the Revolution, what reason was there to alter that opinion since? If the new Republic has shewn no disposition to increase her dominions, if she has not annexed Savoy, Avignon, Liege, Nice, &c., to her territorial possessions, if she has not declared war against all subsisting governments, and confiscated the properties of all corporations, if she has not held out the mask of confraternity as a signal and temptation to rebellion in all countries, but particularly in England, then statesman have a right to change their opinions and systems of policy with respect to her.

Unlimited monarchy, the right honourable gentleman had said, was the object against which France directed the shafts of her enmity. But he would be glad to know whether gentlemen would pretend to say that she was a

friend to limited monarchy. No; she was an enemy to limited monarchy, as monarchy, and to the limitation, as limitation. The aristocracy of this country, all corporations, all bodies, whether civil or ecclesiastic, were the objects of her enmity. She shewed the most determinate malice, in the most express terms, against all parts of the British government, equally to those that limit as those that would extend monarchy; not to this or to that, but to the whole. If conquered by Louis XVI., we might be sure of our established forms being unmolested; but if by republican France, of total extinction. Gentlemen had, with much pertinacity, asked, "Have you demanded satisfaction for this?" This, he contended, was all an error, either of misconception or of will. The acts of France were acts of hostility to this country; her whole system, every speech, every decree, every act, bespoke an intention preclusive of accommodation. No man, he would venture to say, had a more lively sense of the importance of the question before the House, or of the evils of war, than himself. A war with France, under such circumstances as now governed her conduct, must be terrible, but peace much more so. A nation that had abandoned all its valuable distinctions, arts, sciences, religion, law, order, every thing but the sword, was most formidable and dreadful to all nations composed of citizens who only used soldiers as a defence; as such, France should be resisted with spirit and temper, without fear or scruple. In a case of such importance to this country and to mankind, as the present was, gentlemen should examine whether they had any sinister motive, as if in the Divine presence, and act upon the pure result of such examination.

He declared he had no hesitation to pronounce, as if before that presence, that ministers had not precipitated the nation into a war, but were brought into it by overruling necessity. I possess, said he, as deep a sense of the severe inflictions of war as any man can possibly do—

"Trembling I touch it, but with honest zeal."

I always held it as one of the last of evils, and wish only to

adopt it now from the conviction that at no distant period we shall be obliged to encounter it at much greater disadvantage. For four years past it has grieved me to the soul, it has almost reduced me to death, when I observed how things were going on, and felt my utmost exertions unable to produce upon the government of the country, or in the public mind, a conviction of the danger that approached them. At length the infatuation was removed — ministers awoke to the peril that menaced them ere it was too late; and our enemies, finding those arts fail in which they so much confided, are reduced to attack us in open war, and have declared against us. He should therefore give ministers his clear, steady, uniform, unequivocal support; not as some gentlemen did, pretend support on one day, to lessen their authority, impair their power, and obstruct their plans on another, but in the fullest manner he could. If any blame was to be laid to the share of ministers, it was that of too long delay; but if from that delay any accident should arise from want of timely precaution, he would acquit them of it; knowing, as he did, that it was not possible for them, with prudence, to do otherwise; for had they done it at an earlier period they would not have been supported. In his opposition to the views and proceedings of France, for two years, he was convinced he had not the feelings of the nation; nor was it till full-blown mischief had alarmed the people and roused the king, that the government could have a proper support. For his part, he thought himself bound in honour to support ministers; and, if bound to support them, certainly to oppose those who acted adversely to them. From such men — men who could neither vindicate the principles nor deny the power of France, yet impeded the measures taken to secure us against that power — he differed fundamentally and essentially, in every principle of morals, in every principle of manners, in sentiment, in disposition, and in taste.

France, he said, had for some time been guilty of a continued series of hostile acts against this country, both external and internal: first, she directed her pursuits to uni-

versal empire, under the name of fraternity, in order to overturn the fabric of our laws and government; next, she invented a new law of nations, subsidiary to that intention; then she acted on that law. Next, she had directed the principal operations of that law to Great Britain; and lastly, she had established a horrible tyranny within herself, chased every honest person out of her territory, held out temptations the most seductive to the unenlightened lower orders of all countries, and furnished instruments for the overthrow of their government. The putting the King of France to death was done, not as an example to France, not to extinguish the race, not to put an end to monarchy, but as a terror to monarchs, and particularly to the monarch of Great Britain. This newly-created empire of theirs, Mr. Burke said, was only secondary to the accomplishment of their plans for the overthrow of all governments. This had been professed out of the mouth of their minister Cambon. He had declared, that the limits of their empire should be those that nature had set, not those of justice and reason; that was to say, the sea on one side, and the Alps and the Rhine on the other, together with a large cut of the Appenines — and all for the benefit of mankind, of liberty and equality! Should we be deterred by our wealth from resisting these outrages? They directed their invectives and reproaches more at England than any other country. They executed their unhappy, innocent monarch, whom they well knew to be no tyrant, principally, as they alleged, by way of warning to all other tyrants, and an example to all other nations. Even a few hours after the execution of Louis XVI. their minister of justice, Garat, addressing the Convention, said, "We have now thrown down the gauntlet to all tyrants — which gauntlet is the head of a tyrant." Mr. Burke next read the declaration of the members who voted for the death of the king, some saying, "the tree of liberty could not flourish till sprinkled with the blood of tyrants;" others declaring, "that kings were no longer useful but in their deaths," &c.

Some gentlemen had asserted, that if Lord Gower had been left at Paris, or another ambassador had been sent in his place, the unhappy fate of the King of France might have been prevented. This, he said, was answered by the fate of the King of Spain's ambassador, who had made, at the desire of his court, a requisition, but was refused. The murder of the king was intended only as a step to the murder of the other kings of Europe; for they had declared, that no monarchical country could have alliance with them: this, too, at the very moment that they were affecting to conciliate and explain away the decree of the 19th of November. War to the palace, and peace to the cottage, was the plan of their new system: wherever their power extended, they put the poor to judge upon the life and property of the rich; they formed a corps of desertion, a corps of assassination, and gave a pension to the wife and children of the assassin that was put to death for attempting to murder the King of Prussia. They declared all treaties with despots void; they were outlaws of humanity, an uncommunicable people, who acknowledged no God but the sacred right of insurrection, no law but the sovereignty of the people; nor had they any judges but *sans culottes*, whom they made arbiters of the lives and properties of all. As to the rights of the poor, he hoped he understood them as well as the right honourable gentleman; the riches of the rich were held in trust for the poor; this the common people little understood, nor could they be made to understand it, if people held out false communications to corrupt them. Here he read a part of a letter from Dumourier, general of the bare-breeched corps, to Anacharsis Cloots, orator of the naked posteriors. In this letter, after describing the blessings of atheism, and that which he called liberty, he says, "these are the sweets of philosophy! What pity it is that bayonets and cannon are the necessary means of propagating it!" Atheism, Mr. Burke said, was the center from which ray emanated their mischiefs and villanies, and they proceeded to establish it with the sword.

He readily allowed that this was the most dangerous war we were ever engaged in; that we had to contend with a set of men now enured to warfare, and led on by enthusiasm and the ardour of conquest to such a degree, that they bartered the arts, commerce, industry, manufactures, and civilization itself, for the sword. The alliances we had it in our power to form, gave us, however, a good prospect of subduing them; whereas, were they allowed to proceed, we might singly and in the end become their easy prey. He then recited a variety of instances in which the French manifested the most envious and malignant disposition towards this country, and left no effort untried to do it every possible mischief. He read from the Moniteur an account of the meeting of the English Friends of the People in Paris; their address to the National Convention; with their fraternal reception, and their toasts after dinner. Of the latter, one was, the health of Citizens Fox, Mackintosh, Sheridan, Raine, Barlow, and the other friends of liberty who have enlightened the people of England.'

Should we be deterred by our wealth from resisting these outrages? What! exclaimed Mr. Burke, shall we live in a temporary, abject state of timid ease, to fatten ourselves like swine to be killed to-morrow, and to become the easier prey to our enemies? No; God forbid! If we have the spirit that has ever distinguished Britons, that very wealth will be our strength — with it we shall be more than a match for their blind fury. With regard to the means the French have of carrying on the war, the plan of supply they had proposed was worthy of attention. Their minister stated that the country had been purged of 70,000 men of property, all whose effects were to be confiscated, to the amount of 200 million sterling. Thus, like a band of robbers in a cave, they were reckoning the strength of their plunder. He said that they had two terms for raising supplies — confiscation and loan. The common people were relieved by confiscation of the property of the rich; and they reckoned on the confiscation of property in every country they entered, with the brotherly intent of frater-

nizing, as a sufficient supply for their exigencies in that country, and their resource for making war; thus they made war supply them with plunder, and plunder with the means of war.

The right honourable gentleman had spoken with some asperity of an intention in ministers to restore the ancient government of France. He would not compare that government with the government of Great Britain; but certain it was, that it would be felicity and comfort, compared to the present state of tyranny exercised in France; for the very same papers out of which he had read the preceding extracts, contained the melancholy account, that thirty thousand manufacturers were perishing for want in Lyons alone. Thus their enormities had produced misery; their misery would drive them to despair; and out of that despair they would look for a remedy in the destruction of all other countries, and particularly that of Great Britain.

Mr. Fox's amendment was negatived, and the original address agreed to.

MR. FOX'S RESOLUTIONS AGAINST THE WAR WITH FRANCE.

February 18.

THIS day Mr. Fox called the attention of the House to the subject of the war with France, and concluded his speech upon this occasion *, with moving the following Resolutions: 1. "That it is not for the honour or interest of Great Britain to make war upon France on account of the internal circumstances of that country, for the purpose either of suppressing or punishing any opinions and principles, however pernicious in their tendency, which may prevail there, or of establishing among the French people any particular form of government.

* See Fox's Speeches, Vol. v. p. 38.

2. That the particular complaints which have been stated against the conduct of the French government are not of a nature to justify war in the first instance, without having attempted to obtain redress by negociation. 3. That it appears to this House, that in the late negociation between his majesty's ministers and the agents of the French government, the said ministers did not take such measures as were likely to procure redress, without a rupture, for the grievances of which they complained; and particularly that they never stated distinctly to the French government any terms and conditions, the accession to which, on the part of France, would induce his majesty to persevere in a system of neutrality. 4. That it does not appear that the security of Europe, and the rights of independent nations, which had been stated as grounds of war against France, have been attended to by his majesty's ministers in the case of Poland, in the invasion of which unhappy country, both in the last year, and more recently, the most open contempt of the law of nations, and the most unjustifiable spirit of aggrandizement has been manifested, without having produced, as far as appears to this House, any remonstrance from his majesty's ministers. 5. That it is the duty of his majesty's ministers, in the present crisis, to advise his majesty against entering into engagements which may prevent Great Britain from making a separate peace, whenever the interests of his majesty and his people may render such a measure advisable, or which may countenance an opinion in Europe, that his majesty is acting in concert with other powers for the unjustifiable purpose of compelling the people of France to submit to a form of government not approved by that nation."

As soon as the Resolutions had been read,

Mr. BURKE rose. He said, that he thought no apology was due by the right honourable gentleman who preceded him, either to the House or to him, for fatiguing them. For himself, he never was one of those who felt pain in hearing the right honourable gentleman upon any subject but one, and that was, the business now before the House — French politics and French principles. Upon any other topic, however disposed the right honourable gentleman might be to repeat what he had said before, being

a repetition of such excellent matter as always fell from the right honourable gentleman, he should be delighted to hear it — *decies repetita placebit.* The copy of such an excellent original, though made for the hundredth time, must be received with pleasure. But when the right honourable gentleman stooped to imitate wretched French daubers, he could not receive such imitations, he confessed, with satisfaction. He would rather see the copy of the right honourable gentleman himself, though a thousand times repeated, than a copy of such an original as Brissot; and he would aver, that there had not been an argument used, or a proposition made that night, that had not been in the French papers declared to be such arguments and such propositions as would be offered to that House. Whether this strange coincidence arose from accident, or whether the opinions he alluded to were taken by Brissot and the right honourable gentleman, one from the other, or grew out of one common stock, he could not pronounce — the House must judge.

The House, he said, had been that night treated by the right honourable gentleman with much new matter. It was the first time he had ever heard any gentleman, while he was endeavouring to procure an address to his majesty deprecating one war as an unjust one, offer grounds to the House to induce them to enter upon a fresh war, on behalf of a place in another and a remote part of the world. For his part, he never thought Poland, nor did he conceive that she was ever before considered, of sufficient consequence, or so intimately connected with the interests of Great Britain, as to induce us to undertake a war on her account. People, he insisted, in all situations, but particularly nations, must, and ever would have a predilection for their own safety. What though the King of Prussia took Thorn and Dantzic — a circumstance that he by no means approved of — and what though the Empress of Russia overturned the government of Poland — which he declared he as little approved of — yet those were not so near nor such pressing concerns as that of France getting possession of the countries she had done, and daily augmenting her power. Na-

tions, he said, were not to sit like judges, to act with perfect impartiality, to the exclusion of all ideas of self. Their first duty was to take care of themselves; and that of England particularly, was to have a watchful and jealous care of the aggrandizement and encroaching movements of France. France was near; Prussia and Poland were distant; and unless there were apprehensions of the injury to Poland ultimately reaching England, there was nothing that rendered it expedient for her to interfere. England saw Sweden overturn the constitution of Poland; she afterwards saw the Czar depose Stanislaus, and put Augustus on the throne of that kingdom. In short, she saw various revolutions in Poland, and ultimately a partition of it, and never stirred a hand: nor did the right honourable gentleman himself ever propose any interference, till the moment that the hostile and dangerous proceedings in France called for the whole force and energy of the country to be directed against her. This mode of acting, he said, was new and unprecedented. When war was declared by France, and every multiplied offence offered against Great Britain, when every principle she adopted, and every act she did, should be condemned and resisted; to censure that resistance, to turn the attention of the House to a remote part of the world, and neglect the balance of power at and near home, was to him conduct most inexplicable.

The tendency of the resolutions proposed by the right honourable gentleman, was, he thought, the most extraordinary; it was to declare, that Great Britain was, throughout the whole transaction, wrong — and France in every respect in the right. But that right honourable gentleman seemed of late to have adopted a systematic way of thinking upon this subject, and every act of France was, in his opinion, right and just — just when they overturned their ancient government — just when they declared war against Austria — just when they declared war against Prussia — just when they entered Brabant as friends, and treated the people as enemies — just when they planted the steril tree of liberty in the steril soil of Savoy, and annexed it to their

dominions — just when, by getting possession of Geneva, they controuled the power of Switzerland — just when they took Liege and annexed it to their dominions; and, lastly, just when they insulted this country.

When gentlemen attempted to impress on the House an idea, that England should not interfere with the internal government of France, it would naturally occur, he said, that reciprocity should be looked for: that is to say, that France should not interfere in the internal government of England. Was this the case? No. Could any one read the proceedings of the French convention, without seeing that they granted indemnities for murder, lest the punishment for murder and assassination there should discourage a spirit of revolt in this country? Did this, he asked, look like intermeddling with the internal government of England or not? But the other day Danton had declared in the convention, that they had thrown down a king's head as a gauntlet to the kings of Europe; and that the scaffolds erected in Westminster-hall for the eternal trial of Mr. Hastings, would serve for the ministers, and even — he felt, he said, an almost insuperable objection to express it — even for George himself! If the punishment of ministers was necessary, France should leave that punishment to ourselves; and, by not presuming to interfere with us, teach us not to interfere with her. When they passed the sentence for the sacrilegious murder of the best of kings, some few objected to the policy of the murder, and gave as their reason, that possibly it might put their friends in England and Ireland out of humour with them, and prevent their views on this country. Did not this look like an intention of interfering with the internal policy of this country? Did this deserve the encomium lavished upon them by the right honourable gentleman? If he did not know the purity of the right honourable gentleman's intentions, he should consider what he had said to be an encouragement to France to proceed in her designs to promote insurrection and anarchy in this country.

The right honourable gentleman had remarked, that in supporting the ministers in this war, there were two parties, each having a separate ground of reasoning; one the *malus animus* of France and the general internal disorder in that country; and the second, the actual aggressions, without reference to the other. He declared, that whatever opinion he broached, or whatever he said or did, committed no one but himself; he spoke only his own sentiments; he took from no one but himself; he acted on his own single opinion. If he had stated the internal policy of France as a ground for war, it did not preclude him from the right of taking the aggression as a ground also. The House might at one time reject that which necessity might afterwards oblige it to adopt; and it might yet be found expedient to interfere in the internal government of France, by way of retaliation. For his part, he considered them to be a gang of robbers, and that they ought to be treated as such. Gentlemen might cavil at the word; but he still would repeat it. As the pirate told Alexander, that it was only because he had a greater army that he was not called a pirate too, so they, he said, were robbers, but, under cover of their numbers, lost their true distinguishing appellation. His reasons he had given on many occasions, and he would now give them again. His principal objection to France was her internal situation, and her disposition to pull down and destroy all states about her. So far from settling a constitution, they had put all locality of constitution out of the question; and, instead of confining their views to settle that of their own country, were for giving a constitution of fraternity to all the world.

The right honourable gentleman had said, that the French might perhaps be got by negociation to repeal the decree of the 19th of November. But would the right honourable gentleman presume to say, or could the House expect, that they would repeal all the decrees and acts they had passed since that time, every one of them confirming and following up, in express terms, the spirit of that decree? If they did,

they must abrogate all their proceedings. The right honourable gentleman had taken no notice of the decree of the 15th of December — not a word of that! He, for his part, conceived it to be a thousand times worse than the former one; for it went to subvert the whole state of mankind. For this they had not even offered any satisfaction; and though they had declared war, and had pretended to assign reasons for it, they had not declared any end they had in view. For England, therefore, to declare hers, would be to fight upon unequal terms — as if a man were to fight with single rapier, or rather with shield alone, against sword and shield. This doctrine, he insisted, though repeated an hundred times, was still new, unprecedented, and irrational.

For the right honourable gentleman to call the King of Prussia a swindler, was, he thought, highly improper and disrespectful, seeing that he was an ally of Great Britain. France was in a different predicament, and, exclusive of her enormities, was an enemy: besides, she had vilified the king and constitution of England, and was therefore a fit object for opprobrium. But to abuse the King of Prussia was neither politic nor decorous. Indeed, the *sans culottes* language seemed now to have become the *bon ton*. The word despot was a new epithet in diplomatic language. He reminded gentlemen, however, that this country had made alliances with some of the greatest despots on the earth: in treating, they never inquired what the characters of the princes were with whom they treated: the only question they considered was, whether that prince could be useful in a confederacy against France? And this was the policy, in order to keep down the aspiring ambition of that country. The grand alliance was formed to interfere with the internal government of France, and to force Louis XIV. to call the states general. In short, the arguments used by the right honourable gentleman were such as, had they come from any other person, he would not have troubled himself, or taken up the time of the House, with answering. The whole of them, with which the House had been surfeited,

were hashed up in a variety of ways, in every form that the right honourable cook could think of, and crammed down their throats. For his part, however skilfully they were dressed, he wished rather to resort to plain British food, and to go back to the grand alliance. He confessed, that his taste was either too coarse or too refined for the medley dished up of such diversified materials. He would prefer infinitely a solid English dish; a slice of good roast beef to all the kick-shaws of France. Ministers, he wished it to be considered, were not bound by what he said, he having no connection with them. However, he trusted that he could not be justly accused of rashness in any thing he had offered. Of all men, an old man who had seen the vicissitudes of life should be most cautious of giving rash counsel. It could not well be thought that a man so old as he was, could have any personal gratification or interest in plunging his country into a war, merely to oppose "that Mountain Nymph, sweet Liberty." This Mr. Burke quoted in allusion to the galleries of the National Convention, generally called the Mountain.

This House, he said, had already, by a solemn vote, given its fiat to the war; and now the right honourable gentleman called upon it to disavow the principles upon which it had grounded that vote. For his part, he still voted for war, and was insuperably averse to treating, and he would give his reasons for it. In doing so he trusted that the House would give him credit for the proofs which he could, and would, if called upon, bring in confirmation of what he should advance. And first, he contended, that France was not at present in a communicable or negociable situation. She was in a state of anarchy; for he held it to be the very essence of anarchy, that no man could answer for another, nor any race of men bind their successors. Who, then, could we negociate with? Not with the provisionary executive council of France: their very title shewed that they had not power to treat: they had no power, either by delegation or usage. Like the decemvirs of Rome, they were delegated to form a consti-

tution, and refer the result of their proceedings to the forty-eight thousand republics of France. He strongly contended that there was no power constituted in France that could treat, for they declared themselves to be unalienable with other states. In every country in the world there was some one man or body of men that were known to have powers to treat — in France there was none. Roland he had once before described as a factious traitor, who had deceived the confidence of his king, and led him on to ruin. Le Brun had risen to the rank of a minister of state from being an obscure scribe at Liege; afterwards a journalist; from which station he was promoted to a higher department in a newspaper. From Liege he was driven with ignominy, to grace the senate and executive administration of the French government. Roland was surely not of consequence enough to take the whole government of France on himself. Le Brun was the son of a Swiss porter, and he should conceive, not of that imposing dignity to supply the place of all government. Condorcet, though the most humane of all murderers, and Brissot, the most virtuous of all pickpockets, were not of weight enough, he thought, to assume the power. "We, therefore," said Mr. Burke, "come to Citizen Egalité, alias Orleans, and if you chose to treat with him, with all my heart!" As to Dumourier, he could not answer for the obedience of his army, relaxed and weakened as all government was; therefore he was out of the question.

With regard to Chauvelin, his being received here was the greatest instance of compassion to the unfortunate King of France. The black ingratitude that marked the character of that man must procure for him the abhorrence of every honest person living. His father was a servant of the king's, and died one day suddenly while in attendance: the king took the son, then only five years old, under his protection, put him in his father's place, and reared him up; and the return he had made him was to join the band of wretches that afterwards murdered him. In short, upon a minute examination of the conduct of the whole National

Convention, he could not see one that was not stained by the most infamous crimes. In the whole groupe, taking Robespierre, Santerre, and all, the only man of any degree of honour among them was the hangman. This poor fellow had some degree of feeling, from which his colleagues were exempt: he had the spirit to refuse to execute the king, though he was at no loss for deputies. Mr. Burke then described the marked indignity offered to the King of Naples in sending a common grenadier to demand an interview with him in his own palace, and the cavalier manner in which the low republican domineered over him. This proceeding he represented as a marked insult upon all the kings in Europe.

While gentlemen talked of negociation, he should be glad to know which of them would go to France as ambassador. He was sure the right honourable gentleman would not; he had too great a concern for his personal feeling: but statesmen were often willing to send others on a forlorn hope, on which they would not go themselves. The right honourable gentleman had, with much flippancy, talked of the law of nations. He wished to know on what law the French could be expected to treat; they had made a new law of nations of their own, and had pronounced all treaties between kings — or, as they called them, despots — void.

Gentlemen, he said, who were so charmed with the lights of this new philosophy, might say that age had rendered his eyes too dim to perceive the glorious blaze. But old though he was, he saw well enough to distinguish that it was not the light of heaven, but the light of rotten wood and stinking fish — the gloomy sparkling of collected filth, corruption, and putrefaction.

So have I seen, in larder dark,
Of veal a sparkling loin,
Replete with many a brilliant spark,
As sage philosophers remark,
At once both stink and shine.

Mr. Burke concluded with declaring it to be his fixed opinion, that if we continued at peace with France, there would not be ten years of stability in the government of this country.

Mr. Fox's Resolutions were negatived on a division, by 270 against 44.

Mr. Sheridan's Motion relative to the Existence of Seditious Practices in this Country.

March 4.

THIS day Mr. Sheridan brought forward his promised motion; the object of which was, "That this House will, upon this day sen'night, resolve itself into a committee of the whole House, to consider of the seditious practices and insurrections referred to in his majesty's speech at the opening of the present session of parliament." After the motion had been seconded by Mr. Lambton, opposed by Mr. Windham and the Lord Mayor, and supported at considerable length by Mr. Fox,

Mr. Burke rose. He said, that as they were divided into the alarmed and the alarmists, it was a great addition to his alarm, to hear a great statesman advance principles, which our government, and every rational society, totally disclaimed. The right honourable gentleman had said, in substance, that if a domestic faction was combined with a foreign enemy, we must not declare war against the foreign enemy, for fear of strengthening the domestic faction. Very differently had our ancestors thought and acted at the Revolution, in the reign of Queen Anne, of George the First, and George the Second; at each of those periods there were many persons at home dissatisfied with the government, but that did not deter ministers from de-

claring war against France. To be deterred by any such motive, would be to declare faction triumphant. To the reverse of such policy was it owing that we had been able to preserve our monarchy, our peers, and our commons. Were we to wait till France could turn against us the force of the countries she had conquered and pillaged? for that was her mode of making war. Till Dumourier had plundered the bank of Amsterdam, so intimately connected with the bank of England, that they might be said to be the same?

The honourable gentleman had opened his motion in a style of gaiety which, in another person, might have been thought to savour of malignity; but his arguments were not very conclusive. If it was said that the ministers had excited a false alarm, from their terrors of a parliamentary reform, it might be asked, whence came those terrors? Neither the honourable mover, nor his honourable friend near him (Mr. Grey), though they were always talking of reform, had ever made any motion on the subject. The right honourable gentleman (Mr. Fox) had always declared, that he had never seen any plan of reform of which he thought so well as to propose it to the House; and it was not very candid in any man, who saw the subject in that point of view, to be goading others to undertake it. The minister had done more on the subject than any man in the House — more than he thought it wise for any man to do. He had twice moved it in parliament, and once got it recommended from the throne; the latter was a measure of which he most pointedly disapproved, as tending to make the people believe that they were not properly represented. He had heard many motions for these reforms, and had always opposed, but never dreaded them, while previous steps were not taken to infuse into the people distrust and contempt of their representatives. He said, he had ever been and continued to be an enemy to a parliamentary reform, because he thought that a proposition of the kind was a mode of telling the people that they were not represented, at a time when that House effected every object of

representation, and answered all the purposes of good government; and he therefore conceived it to be a measure that would endanger a main and essential part of the constitution of the country. Mr. Burke expressed a hope that Mr. Grey had given up his intention of making a motion respecting a reform in parliament, and presuming that either that was the case, or that the honourable gentleman meant to delay it for a while, he commended his prudence. Whether something might not be done to correct unimportant defects here or there, he neither knew nor cared, while the general system was preserved entire; and to that he feared no danger from sober discussion in that House, independent of factious combinations abroad.

The war, Mr. Burke said, gave no solid increase of power to the minister. By it he hazarded much more than he could gain. He risked that which was the basis of his popularity, his system of finance; and consequently had no motives of personal interest for doing that late which he ought to have done early. The victorious enemy whom we had to engage (and sorry he was to say that they were victorious) had long been connected with a faction at home, whose object was to force us into an alliance with the French, for the purpose of jointly propagating their mischievous principles. To prove this, he read extracts from the correspondence of the Revolution Society in 1791 with twenty-seven Jacobin societies in France, and the names of the members of the committee of correspondence for that year, to shew that they were not men of mean station or inconsiderable influence. Of the sentiments contained in this correspondence, all adverse to the constitution, two persons, not members of the society, had put their names in testimony of approbation. These were Mr. Paine and Dr. Priestley; the former now a member of the French Convention, and the latter, (his great services to philosophy, politics, and religion not having been sufficiently rewarded in this country,) had been honoured with the citizenship of France, because he had declared hostility to the constitution of England. When he knew that this had been going

on for four years, was his alarm to be called a vain alarm? On the 18th of November, a set of Englishmen at Paris had presented an address to the Convention, imploring their good offices in new modelling the British constitution; and on the next day was passed the famous decree for encouraging rebellion in every country. Another society had made a donation for carrying on the crusade of French liberty, which the Convention was graciously pleased to accept, and promise in return aid and protection to its new subjects. He begged to disclaim such protection. He would not have Dumourier, powerful as he thought him, to protect the British constitution. He would trust rather to our own ministers, were his opinion of them ten times worse than it was. Messrs. Cooper and Watt had presented an address, and carried the British colours in a procession; and on what occasion? the most infamous that ever disgraced the name of government. A set of soldiers had been tried by a court martial, and condemned to the gallies. These were fit men for the republicans of Paris. They might be useful — though bad soldiers, they might be good murderers. They were released in contempt of the assembly then sitting, brought to Paris, and paraded in triumph through the hall. On this detestable occasion, Mr. Cooper and Mr. Watt carried the British colours. They were locked in the fraternizing embrace. They received the fraternizing kiss. They went from the hall of the assembly to the hall of the Jacobins, where they kissed the bloody cheek of Marat, the iron cheek of Pluto instead of Proserpine.

> What ardent transports through their bosoms ran,
> Clasp'd in th' embraces of the godlike man!

At Manchester a subscription was opened for the widows of the Marseillois who fell on the 10th of August. The massacre of the 10th of August was never called by its proper name; the murders committed on that day which murdered the constitution, were not murders, but acts of national justice, of which all were emulous to share the

glory. When Brissot, Petion, and their party, had murdered or filled the prisons with their opponents, and obtained power for themselves, they became all of a sudden great lovers of order; but when another party that wished to supplant them murdered these very prisoners, which they were suffered to do unopposed, and were preparing to remove the new men in power, as they had removed their predecessors, then, and not till then, they exclaimed against the massacre of September as a thing totally different from the massacre of August, and in which the nation had no part. What was murder in one month was not murder in another. They reminded him of the directions in old almanacks — in such a month let blood — in such another take cooling physic. But the people were not quite so nice in their distinctions as the Convention. When the latter ordered that the murderers of September should be prosecuted, the forty-eight sections came with an address, and said "these murders were our act; they too were national murders: we were all engaged in them: will you prosecute eight hundred thousand people?" They did not ascribe these murders to the invasion of the Austrian and Prussian armies, an excuse first invented for them in that House; they said, that the persons murdered were aristocrats, who had contrived to get themselves crowded into all the prisons, from which, as from so many forts, they might sally forth on the Jacobins, the first convenient opportunity. What would the honourable gentleman, who was such a critic in plots, say to so well-devised a plot as this? Mr. Burke dwelt upon this topic for a considerable time, enumerating the priests and the women that were murdered. Among these was the Princess of Lamballe. It happened that her head was cut off, and it happened, that next day M. Egalité got her jointure. [Mr. Fox, by some gesture, expressed his disbelief of this. Mr. Burke hastily asked, if it was untrue? Mr. Fox said, certainly; but not more untrue than much of what he had stated besides. Mr. Burke said, he had stated nothing but on accurate inquiry, and with the proofs in his possession; and

any man that said his assertions were untrue, without confuting them, and shewing how they were so, was a calumniator. Mr. Fox called to order, and said, if the right honourable gentleman meant to affront him personally, he should do that elsewhere. With respect to his assertions, six of them had been confuted in one day. Mr. Burke was again going on with the same subject, when the Speaker reminded him that it had no relation to the question before the House.]

Mr. Burke continued. He said, the subject was not introduced into the debate by him. He could not bear patiently attempts to pervert the English character by apologies for murders. A newspaper, the Morning Chronicle, in the month of November, attempted to apologize for those murders, as acts of substantial justice, though shocking to humanity. Mr. Burke pursued his subject in the way of question to Mr. Fox, and being again called to order, adverted to Mr. Sheridan's charge of bad taste for introducing the trick of a dagger on a former debate; whose manner, he said, seemed rather to be borrowed from his new connections, than to be the natural growth of his old principles. He read a long letter from a manufacturer at Birmingham, giving an account of the order given by Dr. Maxwell for making daggers there, and said, the only error he had committed in mentioning the business before, was in stating that three thousand were ordered, and seventy-two made; whereas in fact ten thousand were ordered, and four thousand had been made. He remarked on some publication by a Mr. Oswald, now in Paris, who expressed his hopes that all government by representation would soon be at an end, and that France would be freed from the iron yoke of property. This was now in agitation all over France. The old proprietors were pretty well got rid of by murder or confiscation. Those who had shared in the plunder were endeavouring to make a stand, but they would soon be overpowered. The sovereignty of the people was the most false, wicked, and mischievous doctrine that ever could be preached to

them. It was false, because they had no means of exercising their sovereignty. And why was it broached? Under a delusion, to strip them of their natural guardians, to kill the shepherd and his dogs, and make way for the wolves. If the majority of the public was to be taken not by weight, but by tale, the most ignorant would elect, and none but the crafty and the wicked would be elected. It was said to be dangerous to introduce an opposition of interest between the rich and the poor. Was not this very opposition now the question all over France and Flanders? The right honourable gentleman who warned the House of this danger, said, the man who possessed no property had as much interest in the constitution and good order of society as the man who did. True, an interest visible to every well-informed man, but by no means so to the ignorant. The moment that equality and the sovereignty of the people was adopted as the rule of government, property would be at an end, and religion, morality, and law, which grew out of property, would fall with it.

The right honourable gentleman had talked of desertions from the party of which he was the leader, from weariness of travelling so long in the barren track of opposition. The deserts of Arabia had no charms for these deserters: but perhaps, if a caravan travelling through these deserts should find that their leader, from passion or obstinacy, had wandered from the right road, and that by following him they were in danger of being attacked by some plundering sheik, they might be allowed to think a little of their own safety, and take measures for securing it, independent of the caravan bashaw. He could say for himself, that he had deserted no party, and that of those with whom he had been accustomed to act there was not one that differed from him in opinion on the present state of affairs, or disapproved of a single vote he had given in the course of the present session. Those who had incidentally joined that party by the way had no claim upon him. He had a high opinion of the right honourable gentleman's abilities, but he could not submit his judgment

implicitly to the abilities of any man. The right honourable gentleman had learned from Dr. Price that kings might be cashiered, but seemed to forget that the leaders of parties could do wrong. Yet if the leader should seem to consider the party as made only for him, instead of considering himself as but a part of it; if he should adopt a line of conduct without consent or consultation; if he should make speeches and motions, as if he meant to say, "you dislike what I did to day, I will do more to-morrow; if you disapprove of what I do to-morrow, worse awaits you for the day after that;" it might then be supposed that the party was at liberty to leave him. Mr. Burke pursued this allusion to a considerable length, tending to convey an idea that Mr. Fox had acted during the present session without consulting with his friends. Fears, the right honourable gentleman said, had made a chancellor. In times of difficulty and danger, those who saw the danger were meritorious in accepting offices of trust and responsibility. In such times every sacrifice to the public good must be made by every good citizen. The right honourable gentleman himself had sacrificed no interest to the value of a cat's whisker. He was only sacrificing to the vilest idol that ever was set up. Mr. Burke concluded with discussing the difference between party and faction, and expressing his entire disapprobation of the present motion.

The motion was negatived without a division.

Traiterous Correspondence Bill.

March 22.

THE House being this day in a committee on the "Bill for more effectually preventing, during the war, all traiterous correspondence with, or aid and assistance being given to, his majesty's enemies,"

Mr. Burke rose in defence of the bill. He said he rejoiced that, in times of public emergency, the ministers and the legislators of this country reverted to the salutary principles of our ancestors.. This was undoubtedly the best mode of discharging their duty to the country; and while they adhered to this maxim, no person need apprehend that the constitution would not be taken care of. The present bill had, he said, been condemned with much acrimony by the gentlemen who led the opposition phalanx; but although he had listened with the greatest attention, he had not heard one argument which could prevail upon him to alter his opinion, that the regulation now introduced was neither unwise nor unconstitutional. They had been lavish of their censure, because they asserted that the measure wanted precedent; but, when they made this assertion, they did not recollect, or, what was almost the same thing, they did not chuse to recollect, that in several periods of our history similar precautions had been adopted by the government for the time being. He would not overcharge their memories with instances from remote times, but content himself with producing one which occurred in the year 1688, when a happy Revolution took place in this country — not a revolution stained with blood and infamy, as that lately adopted in a neighbouring kingdom. To convince them of what he now advanced, he affirmed, that the very next chapter to the Bill of Rights contained an act empowering King William to take up and imprison all suspected per-

sons. The people of those days, who were jealous of their rights and liberties, were not heard to murmur against the proceedings of government, but suffered the whole to pass in silence, fully persuaded that they acted for the security of the nation at large. The same policy was afterwards adopted by the ministry who followed; and their political sagacity was much applauded. With regard to Whig and Tory, if properly understood, he hoped that neither of them could be considered as an enemy to the country. A Whig was, in his opinion, a person who agreed to the constitution of King, Lords, and Commons; but who, on any public misunderstanding, would adhere to the aristocracy and democracy of the country, rather than yield to the monarchy. A Tory was a person who acted upon a contrary principle, by favouring, on all occasions, the prerogative of the crown. Those who believed that the constitution was amply secure without the present bill, argued on false principles. The constitution alone could not defend itself. It required all the manly efforts of those who were its guardians to repel every storm which menaced its overthrow. No period had occurred in history more detrimental to its vital principles than the present; and government merited applause and gratitude in proportion to their vigilance and activity.

Some gentlemen had condemned administration for their remiss conduct; but they ought to recollect, that a little rest from the fatigues of business was at times requisite. Sleep, the sister of death, was as necessary to the body politic as to the body natural. Sleep was a cessation of all our faculties. It was a relaxation which infused into the vital stamina a new portion of health and vigour, and enabled all the members to exert their various functions with a greater impulse and effect. I therefore rejoice, said Mr. Burke, that ministers are aroused, and predict the happiest consequences from their energy. From their resolution and activity I anticipate the overthrow and humiliation of the enemy; and have no doubt but that the warmest congratulations will follow their enterprize and

success. You are now at war with an enemy who has waged war with your constitution, and who has been but too successful in establishing among you a dangerous domestic faction. [Here there was an interruption of No! no!] Gentlemen may now deny the assertion, but at a future period I will name them, to their confusion, though not to their shame. — Every kind of government, whatever may be its organization or structure, implied and required that a man should surrender part of his natural rights to obtain those that belong to society; in a word, that he should forego part of his liberty for the security of the remainder. It was this social principle that induced men to unite, and frequently to deprive themselves voluntarily of their freedom, that made them submit to a temporary inconvenience with the view of making it afterwards permanent. Thus it was that in a siege it was found necessary to stop all intercourse between the besieged and the besiegers, to prevent all opportunity of desertion, and modes of injurious communication. Under the pressure of certain difficulties, it was usual to raise the draw-bridges, let down the portcullises, and actually to imprison themselves — their object being the ultimate preservation of their liberties. The enemy of England appeared now at our gate; and however contention may at times prevail between parties aiming at power, or influenced by different political opinions, this was a situation which admitted of no disunion. Dumourier, in advancing into Holland at the head of his barbarians, considered his acquisition incomplete, without carrying his constitution along with him. Every civil or political restriction whatever that was new, must appear a hardship upon an Englishman; but those restrictions were imposed to secure advantages of the greatest possible magnitude and importance. We had nothing less to apprehend than slavery and submission to a foreign yoke — the last of all calamities. He would wish Brutus to submit to Cæsar, or Cæsar to yield to Brutus, rather than that Rome should be subdued by any foreign conqueror. So it was with England. Any internal inconve-

nience which might result from granting unusual power to the ministers of the crown, even if badly exercised, was infinitely preferable to the situation we must be in if Dumourier and his barbarians were to come amongst us, and, with an appeal to the sans culottes, convoke primary assemblies, to rob, and at the same time to legislate for the nation.

The present bill was neither contrary to reason, nor repugnant to law. A variety of instances might be adduced to prove this assertion. It was no greater hardship on the subject to say, you shall not aid or assist the common enemy, than to say, you shall not keep tools or instruments for coining in your possession. An act had been passed prohibiting men from wearing publicly black masks, because, under that disguise, many acts of outrage had been committed. It might, Mr. Burke ludicrously observed, be thought a scandalous act of oppression to prevent the subjects from the enjoyment of a public masquerade — but the state of the times rendered it necessary. It was needless to go into a detail of the various prohibitory laws. The whole history of the police contained explanations on the subject.

Mr. Burke then took the opportunity of denouncing the several clubs of France that had bestowed upon him such marks of obloquy. This denunciation he considered as an act of reciprocity, because they had been particularly attentive to him. I should not, said he, be very glad to see in this country the *Visite Domiciliare*. It is a very pretty expression, but I confess I am not over zealous for its practice. There again is the *Tribunal Revolutionnaire*, which I never wish to see introduced here, however highly the French republicans may extol the system. And last, though not least, the *Douce Fraternité*. All which happy assemblies I hope will be confined to France, and that no attempt will be made to force them on the people of this country.

Mr. Burke proceeded to read from the Moniteur of the 17th instant, the following extract from the speech of citizen Lasource in the Convention — "The moment is not

yet arrived in which may be seen at the bar of the Revolutionary Tribunal, that Orestes of the British parliament, the madman Burke, that insolent Lord Grenville, or that plotter Pitt. But the moment is arrived, in which the public have summoned them to the bar of their opinion. The moment is arrived in which they are consigned to the detestation of all nations, whose execrations and anathemas they so richly deserve — Scourges of the earth, and vultures preying upon the vitals of the people, they have failed not to scatter their crimes, and their gold, to distract a nation which they despaired of being able to conquer. Contented with her own liberties, France felt no wish of carrying her arms beyond her frontiers, till she was provoked by unnecessary acts of aggression. Her anger is now roused, and those against whom it is directed, shall feel the tremendous effects of it. The machinations of these men are discovered. Their gold and their infamy are scattered in vain. Let these conspirators against the human race know this and tremble. We have swords, and we have men to wield them. They have misrepresented the independence of the French nation. They have invariably represented us as robbers and as cannibals. Soon shall they be laid prostrate before the statue of Liberty, from which they shall rise only to mount the scaffold that awaits them, and to expiate, by their death, the evils in which they have involved the human race."

Mr. Burke made various comments on this passage, and went on to observe, that there was a considerable difference between a well-tempered vigilance and watchfulness, which calmly pointed out to an administration the errors of their plans and the necessity of changing them, and the frivolous, cavilling, vexatious, petulant opposition, which thwarted every thing from obstinacy, peevishness, and envy. Whether the conduct of certain gentlemen bore a greater resemblance to the one or the other of these, he would leave it to the country to judge. For his own part, he would soberly, rationally, and firmly support a war, which involved in its event the safety of the constitu-

tion; conscious, that by entrusting a portion of discretionary power in his majesty's ministers — which he would not withdraw till he saw it abused — security might be obtained; which by with-holding it, would be lost.

April 9.

THE bill was strongly opposed in all its stages by Mr. Fox, and particularly this day, on the motion for the third reading.* As soon as he had concluded,

Mr. BURKE rose. He said that he was not surprised the right honourable gentleman who spoke last should predict a reply to what he had said, as he must think too well of the House, as well as of himself, to suppose that he should remain unanswered. What sort of answer he would receive from others he could not take upon him to say; but for himself he would assert, that though his answer might be the weakest, it should certainly be the fairest. Infirmity might call for pity; but his candour, he trusted, would claim approbation. The right honourable gentleman had confined his objections to two points; the one dilatory, the other peremptory. And first, as to the dilatory, or the absence of a certain learned gentleman (Mr. Erskine), he regretted, and the House must regret, that the conflicting duties of that learned gentleman to that House on the one hand, and his clients on the other, should have prevented him from affording assistance so very material as his was to the present discussion. A loss of such magnitude, he said, demanded something by way of comfort, and that he would endeavour to afford them. It must then, in the first place, comfort the House and the right honourable gentleman, to reflect, that whatever the discussion lost by the learned gentleman's absence his clients gained, and he himself was proportionably in-

* See Fox's Speeches, Vol. v. p. 79.

demnified in his profits. Another comfort he offered them was, that though the learned gentleman had been so churlish as not to communicate his rich ideas to his right honourable friend, that gentleman did not stand much in need of his assistance, either in substantial eloquence, splendid declamation, virulence, or acrimony; and while the right honourable gentleman was present, he thought the House would hardly be inconsolable for the loss of his absent friend — though Atlas was gone, Hercules remained to lend his shoulders to the falling globe of the constitution. Mr. Burke ridiculed Mr. Fox's lamentation for the absence of Mr. Erskine. If, however, he said, the House was to defer its business till the learned absentee had discharged his duty to all his clients, it would find itself in the predicament of the peasant of old — *Expectat rusticus dum defluat amnis.* The House, in that case, must wait long enough, and, in doing so, gratify the right honourable gentleman, who, like Fabius, wished to fight all his adversaries by delay — a particular mode of generalship that never was carried to such a pitch in ancient or modern times as by the right honourable gentleman. As to the peremptory objection, he admitted, that if there was a subject more serious in its nature than any other for the contemplation of parliament, it was that of meddling with the laws at all. When the House touched jurisprudence, it should do it with a tender hand; the criminal part still more tenderly; and the law of treason most of all; for they were those in which power might be the most effectually employed to hurt persons obnoxious to it; it should, therefore, be watched most carefully: when the constitution was concerned, there could not be too much caution.

There were, Mr. Burke said, but two points on which the bill could be considered; one, whether it was conformable to law; the other, whether it was consistent with policy; and in considering the matter, the House must throughout take along with them, as the grounds of their reasoning and the very foundation of the bill, that we were at war with France upon its present bottom and system as

it related to the other powers of Europe. The charges of being unconstitutional and hostile to liberty had been levelled at the bill. These, he said, seemed to be the common-place expressions of gentlemen on all occasions: they were used too frequently; but, in his opinion, they should not be used so lightly. The whole of the right honourable gentleman's speech on the present occasion resembled more a prize declamation at a university than the substantial arguments of a statesman; but, coming from a person of abilities so truly respectable — and no man respected the right honourable gentleman's talents more than he did — they required attention. Our constitution, Mr. Burke said, was a provident system, formed of several bodies, for securing the rights, the liberties, the persons and the properties of the people. The constitution was composed of the King, Lords, and Commons; and in the judicial power, the King was represented by the judges, the Lords by the writ of error, and the Commons of England by the juries. Now let us, said he, get out of the torrent of declamation, and see what part of this constitution is touched or affected by the present bill. Is the King's prerogative touched? Are the Lords touched by it in their legislative or judicial capacity? Are the Commons touched by it? Are the judges or juries touched by it? No — none of these: the constitution remains sacred and inviolate; and the whole torrent of declamation on the subject, *ad captandum vulgus*, melts into air.

The question, then, was, did the bill touch those things for the protection of which the constitution existed? Was it asked, whether it infringed on liberty? He would say, yes, it did. It was a law; and laws always infringed in some respect on natural liberty, as commanding something to be done, or something to be avoided. Every law that was made took away something from the portion of liberty. It was, then, to be considered, whether the present measure was such as took away more than was necessary of that liberty? If so, he thought it ought not to pass. And next, whether it took away such a liberty as, if it remained, could do no mischief?

In a constitutional view, all acts done by that House were to be considered as either peace or war acts. There must be a peace police, and a war police; the latter of which was to secure the blessings enjoyed in the former, and each different from the other, the necessities of war calling for an increase of the prerogative of the crown, in progressive proportion to the difficulties that occured in it; and this made a part of the body of the common law. If this, then, was the case, the first thing to be considered was, whether the general matter of the bill harmonized with the general principles of the constitution, and was justified by the example of our ancestors? Convenience, he said, was the ground of all law; and hence the present bill was consistent with the general principles of jurisprudence. The juridical power of punishing as traitors those who aided and comforted the king's enemies, could be traced to Edward III., and, if necessary, even farther. Aiding, in the strict legal sense of the word, was assisting and comforting, was making stronger; and the present act went exactly to that object, following the principles of the law of the 25th of Edward III., and only drew out into detail of specific acts the generality of that statute. And though the provision of that law went in general terms,* to make aiding and comforting the king's enemies treason, yet it directed the king, by the advice of his judges, to specify those particular things which were to be considered as overt acts; and he hoped it would be considered as no disparagement of the gentlemen of the present day to say, that those of that time were as competent to judge. Lord Coke said, that the law was as well understood then as it ever was since; and though the fashionable jargon now was, that those of the present day had got all the wisdom in the world to themselves, there were as great men then as any now in law and church and state. The legislators who made the act of Edward III., he said, gave that direction, as they did not wish to leave to the subtlety of judges, or the simplicity of juries, so very material a point. In the present case, the bill followed the spirit, but not the letter

of that of Edward III., as well as those of Charles II., King William, and Queen Anne; all of which did the same thing that is done in this: so that the House might consider themselves as not acting worse than their ancestors.

Here Mr. Burke read an act of Queen Anne, containing provisions similar to those before the House. This, he said, he had read for the purpose of shewing that our ancestors had entered into an enumeration of the specific things that constituted the offences, not as overt acts, but as acts treasonable in themselves, following exactly that of King William, all of which went on the principle, that it was not safe for the subject to have the construction of overt acts left to the caprice of judges; and the last statute, namely, that of Queen Anne, was not only prospective, but retrospective; as it declared those who had been abroad before it, and returned without license, traitors — and, prospective, as it declared those who transported, or went on board a ship with intent to transport themselves to France, guilty of high treason. So that this was not the first attempt to make an intent high treason. That statute had an energy and a harshness in it far greater than the present, although it was made in the very session that the queen received an account of the glorious victory of Blenheim, although the Houses of parliament were full of Whigs, and although there was not a single division in the Commons on it, from the 12th of January to the 8th of March, the time it was going through the House. Nay, it was carried triumphantly through, though the Commons were as wise and virtuous then as at any time.

Here Mr. Burke quoted a sentence from the *Lex Julia Majestatis*, in order to shew that all nations agreed in the principle, that he who aided the enemy was guilty of high treason. But gentlemen had asked, was a bare intent to commit an act sufficient ground for punishment? To this he would answer, Yes! the law pronounced it. Not, indeed, that intent which lay concealed in the bosom, but that which was conceived with a resolution to execute it; not the cogitation, but the determination. And for this he

gave the authority of Serjeant Hawkins, who says, that by law an intent to commit a felony is a felony itself, as a man shooting at another with intention to kill him: and he put the question, whether, if there were bravoes in this country, as there were in others, the House would hesitate to make their laying a plan to kill a man felony?

As to the word "agree," to which so many objections had been made, Mr. Burke answered with great force of argument, that an agreement implied an intention of two people; it was, in fact, a contract — not a *nudum pactum*, but such as a man might recover on at law. As to the argument of the right honourable gentleman (Mr. Fox), from the statute of frauds and perjuries, that a sum above ten pounds cannot be recovered under a verbal agreement, that right honourable gentleman, he said, was acquainted with the laws well enough to know, that the criminal law punished an offence on a sum far below that on which a civil action could be maintained; for instance, if a man put a twopenny stamp upon paper, it was felony. In short, the smallest pecuniary frauds were held by the law highly criminal — and for this plain reason, that if, in criminal cases, a loose was given in small matters, it would be impossible to know where the mischief would end: so that from criminal and civil law it was impossible to argue *à minore ad majorum*, or *vice versa*. When gentlemen objected to the provisions of the bill on the score of possible perjury, they should reflect, that it was the condition of human law and human nature to be ruled by the oaths of men in trials for their life and property, there being no other means to be resorted to. That objection, therefore, was at an end: so that the bill introduced no new matter, no anomaly whatsoever; and if it differed from the statute of Anne in any thing, it was in being infinitely more lenient.

The next matter for the consideration of the House was, whether there were any new occasions that demanded this measure? And if there were, whether they came within the meaning of the words, aiding and comforting? For the laws, he said, were bending to occasions while they

followed principles, as the rays of light acting under a general law are refracted by a particular modification of glass through which they would, under the same laws, otherwise pass in a direct line. What was the particular occasion that governed the present case? France had endeavoured, under the specious pretext of an enlarged benevolence, to sow the seeds of enmity among nations, and destroy all local attachments, calling them narrow and illiberal — thereby to dissever the people from their governors. Let any one read the proceedings of that mother of mischief, the Revolution Society, and be convinced. In consequence of this, he said, the House was called upon to give every fair advantage and every parental advice to the country, and preserve that moral relation, the destruction of which was the great aim of its enemies.

As to the injury commerce might be supposed to receive, he would say a few words. England was a commercial nation — so was every other, as far as it could. But if, by commercial nation, it was implied that commerce was her ultimate, her only end, he would deny it; her commerce was a subservient instrument to her greater interests, her security, her honour, and her religion. If the commercial spirit tended to break those, he insisted that it should be lowered. Gentlemen had said, that if we refused to supply the French, Holland would; and elucidated their argument by an old observation, that if the devil was carrying a Dutchman to hell, he would contract with him to supply the coals. To this he could only say, that our supplying the French would be exactly a parallel case, and full as despicable; and he would answer for the liberal and patriotic spirit of the British merchants, that they would willingly dispense with the profits of that trade for the benefit of their country. As to the insuring of our enemy's ships, he objected to it, chiefly on account of the moral effect it must have on the minds of the people. In a state of warfare, it must be the wish of every good mind to disarm the enemy rather by despoiling than killing them, as well from motives of humanity as personal interest. When,

therefore, a prize was taken, and an English insurer was to pay the loss, exclusive of the increased litigation, it either gave the captor the pain to deplore the loss of a fellow subject, or rendered him callous to the consideration and feelings he should have on such an account, and inspired an habitual delight in the plunder of his fellow citizens, and an indifference to the welfare of his country, perhaps worse. The clause for preventing British subjects purchasing in the funds of France, he observed, and with infinite regret observed, was left out. It was, indeed, he said, *Hiatus valde deflendus:* but as it had been abandoned, he would make no farther remarks on it.

On the whole, conceiving, as he did, that it was the duty of the House to concentrate and fortify the country — conceiving that it was their duty to keep their subjects at home, and prevent an adulterous communication with the French — and conceiving that a man was as likely to be a better husband for having two wives, as a better subject for having two countries — he would give the bill his most hearty concurrence. And when the House considered that France could only be enabled to carry on war out of resources drawn from the bowels of Great Britain, it could not but approve of a measure which only went to prevent Englishmen from fighting against their own country, and making contracts to its ruin. "Let us not," said Mr. Burke, "turn our every thing, the love of our country, our honour, our virtue, our religion, and our security, to traffic — and estimate them by the scale of pecuniary or commercial reckoning. The nation that goes to that calculation destroys itself."

Here Mr. Burke drew an animated picture of a contractor dealing with the French, and put into his mouth the following expressions: "Should our sovereign, impelled by parental feelings for his people, hazard his august person, and take the field against you, behold, here is powder of the first quality, and here are bullets that shall do his business. I do not cheat you; believe me, they are good. Or should his children, stimulated by an hereditary thirst

for glory, take the field, their avarice shall defeat their courage; those bullets and this bayonet shall go to their hearts, and Great Britain and her commerce be the gainer." He then turned to the subscription set on foot for a provision for the widows of men killed in battle, pronounced a warm eulogium on the subscribers, and said, "But then comes Mr. Contractor, and tells them, if I don't supply, you have no occasion to subscribe — and while they find charity, his avarice finds objects for it." Mr. Burke concluded by declaring, that all he desired was, that England would be true to herself, and not carry on an adulterous intercourse with the prostitute outcasts of mankind.

The bill was passed, on a division, by 154 to 53.

Complaint of a Libel on the Managers of the Impeachment against Mr. Hastings.

June 12.

THIS day Mr. Whitbread called the attention of the House to a paper, called "The World," dated the 27th of May, containing a scandalous reflection on the managers appointed by that House to conduct the impeachment against Mr. Hastings. It was there stated, that a right reverend prelate (the Archbishop of York) had said, "that it was impossible for him to sit silent, to listen to the illiberal conduct of the managers; that they examined a witness as if he was not a witness, but a pickpocket; and that if Marat or Robespierre were there, they could not conduct the impeachment in a more scandalous manner, &c." This, Mr. Whitbread said, was highly indecorous, and an insult not only on the managers, but also on the House of Commons itself. — The said newspaper was then delivered in at the table, and the paragraphs complained of therein being read, Mr. Whitbread moved, "That the said paragraphs contain matter of a scandalous and libellous nature, reflecting

on the conduct of the members appointed by this House to manage the impeachment against Warren Hastings, Esq." The motion being seconded by Mr. Francis, was opposed by Mr. Secretary Dundas, who concluded his speech with moving, "That the House do now adjourn." — Mr. Windham felt so strongly the necessity of supporting the managers, that if the honourable gentleman who made the first motion should think fit to persist in it, he should vote with him, though he could wish for an adjournment. Both Mr. Dundas and Mr. Windham took occasion to express their satisfaction, that Mr. Burke, who was in the managers' box when these unhandsome expressions were uttered, had behaved with such uncommon moderation. His conduct, they said, was very noble. He had put on, as it were, a deafness upon the occasion, which had formed an admirable contrast with the intemperance of the other party.

Mr. BURKE said it was not his intention when he came into the House to take any part in the present question. The honourable gentleman who made the motion would, he was sure, do him the justice to say, that it was not at his desire, but in obedience to the impulse of his own feelings, that he had brought forward the business. He had two motives for rising at present; one was to say, that after what had passed in the court of King's Bench, on the trial of Stockdale, he never would consent to order another prosecution in that court for any libel upon the House of Commons. The House was constitutionally empowered to punish by attachment every breach of its own privileges, and ought never to suffer that power to be taken out of its own hands, nor delegate the exercise of it to any court whatever. The other was, to declare that the ends of justice must necessarily be defeated, if, whilst a public prosecution was depending in a court of law competent to decide upon it, another tribunal was suffered to be erected in a newspaper, to try the prosecutors, mislead the judgment of the nation, and poison the public mind against those who were labouring to bring offenders to justice. He expressed the pleasure it gave him to find that the forbearance which marked his conduct when the words complained of

were used, appeared to meet the approbation of the House. Forbearance, he said, was a virtue which he hoped he should always be able to practise, when he himself was alone concerned; but when the injuries which were to be avenged, had been sustained by others, when he had to plead the cause of oppressed millions against their oppressors, he trusted he never should show the smallest degree of forbearance; but that he should be found to give full scope to the passions and resentments which belong to the prosecutors of wrongs done to the public. Such passions and resentments were held in trust for great public purposes; and for these, but for no other, would he ever suffer them to sway. Against the right reverend prelate in question, he had not the least personal resentment, on the contrary he could find excuses for him in his age, and in the impatience generally attendant upon it. As to the advice given him by an honourable friend not to put his trust in princes or bishops, he would assure his honourable friend, that he never would put trust in princes or in people, in the high or in the low, but in Him alone, by whose authority he was desired to put no trust in either. He said he should not vote at all upon the subject, and came to the House chiefly for the purpose of repeating his protest against committing the privileges of that House to any tribunal under Heaven, except its own.

The motion of adjournment was carried by a majority of 60 against 18.

MR. FOX'S MOTION FOR THE RE-ESTABLISHMENT OF PEACE WITH FRANCE.

June 17.

THIS day Mr. Fox, in pursuance of the notice he had previously given, called the attention of the House to the subject of the war with France, and concluded his speech * with moving, "That an humble address be presented to his majesty, to lay before his majesty the humble representations of his faithful Commons on the present awful aud momentous crisis; a duty which they feel themselves the more especially called upon to perform at this juncture, as a long and eventful period may probably elapse before his majesty can again have an opportunity of collecting, through their representations, the real sentiments and wishes of his people: In the name of the people of Great Britain, his majesty's faithful Commons are bound to declare, that they concurred in the measures necessary to carry on the present war, for the objects of defence and security, and for those objects only: That any plan of aggrandizement, founded on the present distressed situation of France, much less any purpose of establishing among the French people any particular form of government, never would have had their concurrence or support: In expressing these their sentiments and opinions, on entering into the present war, his majesty's faithful Commons are sensible that they are only repeating those benevolent declarations which true policy, and a careful attention to the real interests of the British nation, induced his majesty to use in his most gracious speech from the throne at the beginning of the present session of parliament, and in repeated messages to this House:

"To represent to his majesty, that though his faithful Commons have the most perfect reliance on his majesty's sacred word and promise, solemnly pledged to this country and to Europe, not to interfere in the internal affairs of France, or to enter into the views and projects of other powers who, in

* See Fox's Speeches, Vol. v. p. 136.

the present war, may be actuated by motives far different from those which govern the conduct of his majesty, yet they feel it to be their indispensable duty to call his majesty's most serious attention to some of the circumstances which have occurred since the commencement of the present unfortunate contest:

"The French arms, which after a successful invasion of Brabant, had threatened the security of his majesty's allies, the States General, have since been confined within their own territory, and are now occupied in defence of their frontier towns against the united forces of his majesty and his allies: the danger apprehended from the former conquests and aggrandizement of the French nation appears therefore to be no longer a subject of just uneasiness and alarm:

"Some of the powers engaged in the confederacy against France have, on the other hand, openly avowed, and successfully executed, plans of domination and conquest, not less formidable to the general liberties of Europe. The rapacious and faithless dismemberment of the unhappy kingdom of Poland, without having produced, as far as it appears to this House, any remonstrance from his majesty's ministers, has excited in his majesty's faithful Commons the highest indignation at so daring an outrage on the rights of independent nations, and the keenest solicitude to rescue the honour of the British government from the suspicion of having concurred or acquiesced in measures so odious in their principle, and so dangerous in their example, to the peace and happiness of mankind.

"The severe calamities which, since the commencement of the present war, this nation has already experienced, the shock given to commercial credit, and the alarming consequences which the failure of the mercantile and manufacturing interests threatens to the public reveuue, and to the general prosperity of the country, cannot have failed to attract his majesty's attention, and to excite in his benevolent mind a sincere desire to relieve his subjects from distresses, a termination of which they cannot hope for but in the speedy re-establishment of peace:

"His majesty's faithful Commons make it, therefore, their most earnest and solemn request, that his majesty, taking into his consideration all the above circumstances, will not fail to employ the earliest measures for procuring peace on such terms as are consistent with the professed objects of the war,

and with that good faith, strict justice, and liberal and enlightened policy, which have hitherto so peculiarly distinguished the British nation."

After the motion had been opposed by Mr. Windham, and supported by Mr. Jekyll,

Mr. BURKE rose. He said he was desirous, on so great an occasion, to give his clear and decided, though he hoped not a pertinacious and obstinate, opinion. He conceived it to involve a question which would decide for ever our connections with the continent — the question, whether we should make war with all the powers of Europe, in order to make peace with France? That House was called upon to send up an address to the throne, containing a most bitter invective against three great powers of Europe; and what was to be the consequence? Did we mean to provoke them without an object? If so, it was an idle invective, without meaning. He would not enter into the business of Poland, though he had certainly formed his own opinion upon it; but he must say, that it was a womanish proceeding at best, to rail without doing more; and, if we do more, we are at war with all Europe. He must suppose, however, that the right honourable gentleman, whom he would suspect of any thing rather than of weak designs, did really propose the making an attack in order to restore Poland. On this subject of Poland, whatever might be his sentiments, he should think it wise to hold his tongue; for was it possible for Great Britain to go to war with Austria, Russia, and Prussia, with all the great powers of Europe, with no ally but France? and what government was there in France with which we could form an alliance? He remembered, in history, when Charles the Twelfth disposed of Poland, and gave it another king. But did we, on that, or on other similar occasions, call upon France to assist us in rescuing Poland? No. France, indeed, would have been sufficiently desirous of assisting us, but Great Britain and France could not then attempt it; the situation of Poland rendered any such attempt imprac-

ticable; for, with respect to us, Poland might be, in fact, considered as a country in the moon.

But what is the line of conduct we are now desired to follow with respect to those powers with whom we have hitherto acted in this war? Shall we begin to desert them in the first moment of our being called upon to attack? Shall we totally forget what they have done, and how they fought for us in defence of Holland, a country in which we have so great an interest? The danger which then threatened Holland was formidable indeed, when attacked by M. Dumourier, no mean man, whom he was rather glad to see as a guest here in London. Of him and his hundred thousand sans culottes the Austrians had cleared Holland, and, in doing so, had shed torrents of their blood. Shall we, then, now say that we are tired of the war, at the very instant when we have got a glimpse of hope, and before we have taken any one fortress? For his part, he reprobated such shameful perfidy. But when we shall have excommunicated ourselves from the whole band of European sovereigns, in order to treat with France, we can have no security whatever for the performance of any treaty on their part, which can be equal even to the constancy or consistency of a single individual. He did not deny the ambition of the sovereign powers of Europe; but the question, in his opinion, came to be, which was that power whose ambition was most likely to press on Great Britain? The partition of Poland might possibly be made so as not to destroy, or even to affect, in any great degree, the balance of power in Europe. The King of Prussia had, indeed, taken Dantzick, and he was sorry for it; but had he taken the lives or the property of any individuals? He hoped it would not be conceived that he approved of this; but he must consider the different conduct of France, and oppose to it the detestable principles of their infamous decree of the 15th of December. He had not heard that, either in Poland or in Dantzick, any one clergyman had lost his living, or that any man had lost his life or property.

The beginning of a war must always be the most expen-

sive part; and yet, after having incurred all this enormous expence, we are now called upon to put an end to the war, before it has been possible to derive any fruits from it. On two former occasions the right honourable gentleman had censured, in strong terms, the conduct of the chancellor of the exchequer in preparing armaments, without doing any thing more; and shall we now desire him to do so a third time? The right honourable gentleman had said, that if we wait till there shall be a settled government in France, we may wait for ever. But, in direct contradiction to this, the right honourable gentleman himself has all along urged this proposition, that anarchy cannot last long, while despotism generally reigns for a considerable length of time. He was acquainted with the uncommon powers of the right honourable gentleman's mind, and could not without shame and concern observe, that he descended to such degrading proposals, and was reduced to such idle, paltry, and frivolous arguments.

Supposing, however, it were deemed prudent to break off all other connections for the sake of espousing the interests of France, let us consider, said Mr. Burke, the possibility of negociation. Supposing that England was to send an ambassador to the sans culottes convention to make the *amende honorable*, in a white sheet at the bar of the meeting, and by way of approximating to their system of equality, confer that agreeable and honourable office on some nobleman of high rank, how were we sure that, instead of a respectful reception, he would not be saluted *à-la-mode* de Santerre, holding the bloody head of Louis XVI. as an example to all sovereigns? Would you next have him apply to the minister Le Brun? Unfortunately, the poor fellow is in gaol, and it may be very uncertain whether they would consent to grant him a day-rule. Would you apply to the minister Claviere? You then would have *non est inventus* returned upon the back of the writ, for it seems he is not to be found. Would you have recourse to Roland? Why, he is not only in gaol but also his wife along with him, who is said to be the real minister. The

wife, too, may be inaccessible; for as Roland is known to be uxorious, he is the more likely to be jealous, and would not perhaps readily admit the visit of your ambassador. Apply to Brissot, who has so many friends in this country, and let your ambassador take care that he leaves his watch behind him. But, alas! here again, Brissot is likewise in gaol, bearing a repetition of that sort of misfortune to which it is hoped that habit may reconcile him. Pay your addresses to Egalité, and you will find him in his dungeon at Marseilles, sighing at the reflection of those hopes he once entertained of being lieutenant-general of the crown of France. There then only remains (continued Mr. Burke) my celebrated friend, the mild and merciful Marat, whom a negociator might address with very excellent effect, if he carried credentials or recommendations from me. Such is the list of sovereigns who are to receive the submission and *amende honorable* of the British nation! To shew how little reliance could be placed on the faith of those rulers, supposing we had entered into a treaty with them, he read a long extract of a report made by Brissot from the diplomatic committee, wherein it is stated as disgraceful to a free people to have any treaties whatever, especially with sovereigns, whom they compliment with the name of tyrants. It was in vain to say, after all, that the power of these people was not formidable. They had already evinced it, and were at one time so flushed with their successes, as to order one of their generals to advance into Italy, and depose the poor pope, who had not the power, if he possessed the inclination, of doing them any injury. The truth was, that a government such as theirs, assisted by enthusiasm, though it produced nothing but misery, anarchy, and disorder at home, had still the malignant power of great offensive operations abroad.

It had been said, shall we interfere for the purpose of obtruding on the French whatever form of government we shall think fitting for them? He was of opinion, that no country could force a particular form of government upon another, but that all received such a one as was, under all the cir-

cumstances of the case, most adapted to their situations. Governments were, in this instance, like individuals; no one had a right officiously to obtrude with his advice, or undertake the management of another's affairs; but if a man were guilty of the most indecent outrages, if he were to attempt to murder his wife, to starve his children, or to burn his habitation, should we not interfere to prevent attacks upon our feelings and our safety? He remarked, that there was one grand sophistry that ran through the whole of the right honourable gentleman's speeches, namely, that we made war on France, while in fact she made war upon us, and that, too, at a time when Dumourier was affecting to treat with us. He insisted that it was a travelling delusion, that nations were not to interfere with each other; for if any nation endeavoured to confuse, to trample upon, violate, or despise the rights of others, the interests of human society required that all should join against them. If, by the subversion of all law and religion, a nation adopts a malignant spirit to produce anarchy and mischief in other countries, it is the right of nations to go to war with them. In support of this doctrine, he quoted the authority of Vattel, who lays it down, that if one nation adopt principles injurious to all government and order, such a nation is to be opposed from principles of common safety. This, he insisted, was the spirit of France; and what was to keep the effects of it from England? War, and nothing else. Until, therefore, we could find that security in their principles and practices which could alone make peace permanent, he would never agree to prostrate the throne of Great Britain at the foot of any National Convention or Jacobin club whatever. He again drew a picture of a British ambassador making the *amende honorable* before the National Convention. To this end he would have the first blood in the land sent, to make the *amende* more complete: there he should stand with a white sheet on, and a torch in his hand, all the ghastly regicides in rows about him, the president shaking the bloody head of Louis XVI. to make the *amende* more horrible; which

being accomplished, Danton, with his bloody jaws, would give him a civic kiss in token of adoption. To such a ceremony he could never agree, and therefore he must resist the present motion.

The House divided on Mr. Fox's motion: Yeas 47: Noes 187. So it passed in the negative.

General Fitzpatrick's Motion relative to the Detention of M. De la Fayette.

March 17. 1794.

THIS day, General Fitzpatrick moved, "That an humble address be presented to his majesty, to represent to his majesty, that the detention of the General La Fayette, Messieurs Alexander Lameth, La Tour Maubourg, and Bureau de Pusy, in the prisons of his majesty's ally the King of Prussia, is highly injurious to the cause of his majesty and his allies; and most humbly to beseech his majesty to intercede with the court of Berlin, in such manner as to his royal wisdom shall seem most proper for the deliverance of these unfortunate persons." General Fitzpatrick insisted, that La Fayette had suffered for his attachment to the constitutional monarchy which we now professedly wished to restore, and enlarged on the merits and services of that unfortunate person, as far overbalancing any errors with which he might be chargeable. The motion was seconded by General Tarleton. After it had been opposed by Mr. Pitt and supported by Mr. Fox,

Mr. BURKE rose. He said that as there were no precedents on the books, no circumstance similar to the present, the House ought to be extremely cautious in departing from the policy of their ancestors. They saw before them, within a short space of time, the fall of a great monarchy, the destruction of numbers, and the imprisonment of two

hundred thousand persons. He was glad to remark, from what had fallen from some gentlemen in the course of the present debate, that they were now convinced of the danger of those principles of universal but fictitious benevolence which forbad any interference in the affairs of a foreign state, or the conduct of a sovereign independent power. As he, however, had never adopted those principles, he had no difficulty of declaring, that if a proper case of interposition were established, it would be perfectly consistent with the honour and dignity of this country to interpose; but it could not be contended that the case of M. La Fayette was of that complexion, when we had not deemed it requisite so to do for the purpose of preventing the numberless massacres, murders, and revolutions, by which France had been desolated and destroyed. He considered the honourable gentleman who brought forward the motion, as actuated by generous motives: *Tantum infelicem nimium dilexit amicum.* That House, Mr. Burke said, would be stepping out of its way to pay attention to such a person as M. La Fayette, at a time when so many other objects of pity passed before their view: when Priam was left naked on the shore; when Hecuba was dragged from prison to prison, treated with unparalleled cruelty and baseness, and at length barbarously murdered; when we were to look at the calamitous situations of virtuous and respectable characters, and of matrons, in whose houses we had once been hospitably treated; and, above all, when La Fayette might be considered the origin and the author of all these calamities, he thought that "illustrious exile," as he was called, though, in fact, the outcast of the world, deserved the fate he had met with. Only one example of any such interference had been adduced — the case of the interposition of the late court of France, which was now so frequently denominated despotic and tyrannical, in favour of Sir Charles Asgill; an interposition which was chiefly rendered effectual by the exertions of the late unfortunate queen, who, in the exercise of her power, had ever displayed the utmost benevolen and benignity, and whose

firmness, intrepidity, and resolution, in meeting her fate, would form an everlasting contrast to the tyranny, cruelty, and baseness of those by whom she was murdered.

Mr. Burke adverted to the state of the prisons in France, and particularly at Paris; and observed that there were upwards of six thousand prisoners, men, women, and children, lying on straw, and perishing for want of the necessaries of life. These unfortunate persons had been guilty of no crime. La Fayette, he contended, was the principal author of all their misfortunes, and of all the misfortunes that had befallen France; and, therefore, however much other gentlemen might pity him, Mr. Burke said, he certainly was not the object of his compassion. Instead of lamenting the condition of that man, he mourned over those crowds of truly illustrious exiles who were wandering over Europe, and to support whom the charity of the public was every where taxed; exiles, who, deprived by him, in the first instance, of their titles, were robbed of "that which not enriched him, and left them poor indeed!" While these nobles were in this situation, stripped of that consciousness of rank which was the last consolation of the unfortunate, they were called upon to pass all these over with neglect, and turn their whole attention to citizen Fayette! This extraordinary affectation of sorrow for the lot of one culpable individual was ill-placed, ridiculous, and preposterous. It surely was not the business of this country to set up for a general arbiter of the law of nations. Every nation had a right to claim her own citizens; but if she did not do so, no foreign state had a right to interfere and officiously make any such demand. Did France claim him? Yes, as a traitor, whom the rabble that he had been the instrument in elevating to power were desirous of sacrificing. No other nation in Europe claimed him. His conduct in our contest with the Americans we were required to forget; and he was very much disposed to do so; because, if a contrary principle were pursued, wars would be eternal. La Fayette's behaviour, however, in entering as a volunteer into the Ame-

rican service, before any hostility had taken place between this kingdom and France, was not surely of such a nature as to entitle him to any extraordinary favour; and as to his fondness for military glory, what could be said, but that he who wishes to live by the sword, must likewise run the risk of perishing by the sword?

With regard to the right this man had to rebel against his lawful sovereign, he would say nothing, but that the ruin of which he had been the promoter had at length overwhelmed himself; and he trusted that his downfall would be a lesson to mankind, how any of them attempted to overturn the fabric of civilized society, lest they should also become the victims of their own rashness.

The honourable General had admitted, that the constitution of 1789 could not exist, and yet he had praised Fayette for pulling down a building which had remained for fourteen hundred years; and had spoken of the purity of his intentions, when it could not but be recollected, that he had brought back the king and queen from Varennes, had imprisoned them at Paris, and had thus sown the seeds of republicanism which were to ripen to his own destruction. Under these circumstances, Lord Malmesbury, at the court of Berlin, seizing upon one of the *mollia tempora fandi*, which, as an able negociator, he must be supposed to be well acquainted with, was thus to address the King of Prussia: "Thou dark and sanguinary tyrant! thou diabolical monster! give up M. La Fayette to the king my master, and there is a subsidy to you by way of ransom for so doing." But if he should refuse to do so, we must console ourselves with reflecting, that while, in one city in the halcyon land of liberty, six thousand prisoners are confined, it required all the tyrants in Europe to club their power together to make out four prisoners. Kings, indeed, ought to be cautious how they let such birds out of their cages. Louis the Sixteenth had let Fayette fly to America, and he had returned and imprisoned the master who had given him his liberty. It might be our interest, not only to forgive injuries, but to

bestow favours; but with this individual we had done; and as we shewed no enmity, as little were we obliged to bestow any friendship.

M. La Fayette, Mr. Burke said, never supported royalty. He was the first who led an army of sans culottes against that king who had released him from a prison, and sent him to America to command his armies. Not a man in France would join in the cause for releasing him now. He was not graceful to any party. He would not have been received, even had he been sent to Toulon. The Toulonese had no idea of the constitution of 1789; they consisted of many descriptions of persons, some royalists, some republicans, and others who had no idea of a government at all. It was absurd, then, to say that these persons, inhabiting a sea-port town, with no respectability, and dreading a guillotine, which they had been expecting every day, could be supposed capable of settling the constitution of France. It might as well be said, that the bawdy-houses on the Point at Portsmouth were capable of forming a constitution and government for England. It was wise, then, to leave matters as they stood when Lord Hood went there, and let the King of France, after he should be established, settle the constitution. The Toulonese did not at that time demand Fayette, but they demanded Monsieur, the brother of the king, as regent. England had done La Fayette no injury, and was not obliged to do him any service, but to leave him where he was. Like another Sampson he had pulled down the great fabric which protected him, but had not strength to raise it up again; and that circumstance, he trusted, would serve as a lesson to all persons in future, who should attempt to rebel against their lawful sovereign. That which he had raised up in the room of the fabric he had levelled, was pregnant with the seeds of republicanism and ruin. And this was the man now to be released!

The present, Mr. Burke said, was the most extraordinary application he had ever heard made. It was made in behalf of the author of numerous horrors, which seemed

to be a summary of all that had ever taken place before in the world! And of all those horrors, there was no circumstance of barbarity — excepting the murder of the king and queen — more atrocious than the massacre of M. Foulon and M. Berthier. The Abbé Foulon, son to that person, was now in London, and he had often declared his anguish in these words: "I will be revenged of La Fayette; it was he that had my father murdered; it was he who tore out and devoured his heart." I would not, concluded Mr. Burke, debauch my humanity by supporting an application like the present, in behalf of such a horrid ruffian.

The House divided on General Fitzpatrick's motion: Yeas 46: Noes 153. So it passed in the negative.

MOTION FOR TAXING PLACEMEN AND PENSIONERS DURING THE CONTINUANCE OF THE WAR.

April 8.

THIS day Mr. Harrison moved, "That leave be given to bring in a bill for the purpose of appropriating a certain part of the emoluments arising from certain pensions and sinecure places, for the service of the public, during the continuance of the war, at the disposal of parliament; and also for the purpose of appropriating a part of the emoluments arising from certain efficient places, amounting to more than a specified sum, to be applied to the same purpose." After the motion had been supported by Mr. Coke of Norfolk and Mr. Curwen; and opposed by Mr. Hawkins Browne and Mr. Montagu,

Mr. BURKE rose. He said, the present proposition was of so singular and unprecedented a nature, that he could hardly believe the honourable mover was serious in his mode of treating it. Undoubtedly, the great merit of a jest was

the serious carriage and deportment of him who was the author of it, who, while he made every one around him laugh, preserved himself a grave aspect. The honourable gentleman who had brought forward the present motion seemed to possess this talent in an eminent degree; for he had, in the most grave and serious language, brought forward a proposition at which he must not only laugh inwardly himself, but must know that others would laugh openly. The motion seemed to be of a twofold nature, and might be considered in two points of view: first, as a question of charity, and, secondly, as a question of policy. It was held out as the charity to relieve the distressed manufacturers of the country, but the policy was to relieve the distressed manufacturers of acts of parliament. He had supposed, that when the honourable gentleman brought such a motion forward, which was to be an object of revenue, and was to go in aid of the resources of his country that some calculation would have been produced to shew how much would be saved to the country by the proposed retrenchment. But no such thing had been done. The charity was to be applied, he supposed, to the manufacturers and their friends out of parliament, some of whom might be members of parliament, for ought he knew, in want of employ. "*Materiam superabit opus.*" Having hunted this varying Proteus in every shape, they now pursued it to Norwich. Why was Norwich the particular object? What had become of the poor Spitalfields weavers, for whom they had so lately raised subscriptions? What had they done? Or why had all the kingdom so sunk in consideration, that Norwich only drew compassion? The gentlemen were very compassionate indeed, especially to the poor: but their compassion reminded him of the late queen-mother, who, when Somerset House was building, used to look at the prospect on the Surry-side of the water, and think of their poor inhabitants,

——— "Whose dwellings lie
"First in her care, and always in her eye."

Mr. Burke asked what benefit could, on a reasonable calculation, be expected from this new system of finance? He conceived the whole to be a mockery, and that the money raised by it would not even purchase small beer enough for the poor of Norwich for the supper of a single night. The proposition in itself he considered to be of the most dangerous kind, as it went to a direct invasion of the rights and properties of individuals; for the emoluments of places held under the crown were possessions as sacred as that of any landed property in the country, and a motion might as well be made for taking a certain part of the property of a man who possessed ten or twenty thousand a year, which might be considered as a sinecure, as he had done nothing for it; in fact, every man who held any place of profit, by a legal title from the crown, had as good a tenure as that by which the honourable gentleman and his friends dared to bring forward and maintain such a motion—[Mr. M. A. Taylor appealed to the Speaker. He said he thought every member had a right to make a motion in that House; and parliament had then the right to dispose of it. When such language was used as that they had *dared* to make a motion, he certainly would call to order, and by his legal information he knew that he was authorised to do so. The chancellor of the exchequer said, that when his right honourable friend had used the word that appeared so obnoxious, it seemed to him that he meant nothing more than the rashness and indiscretion of the honourable gentleman who made the motion. The Speaker said, he was himself in doubt whether he should have called the right honourable gentleman to order when he used the term; but an idea that it was used as the chancellor of the exchequer had explained it, prevented him.]

Mr. Burke thanked the Speaker for his candour, and proceeded. Since the word *dare* was so exceptionable, he said, and as he was not that great Mr. Dare of whom every body had heard so much, he would not *dare* to provoke those daring and courageous gentlemen again to call to

order. He would call, then, their wisdom and moderation of relieving the poor (words to which they could not have objections) a more dangerous and ruinous proposition than he had ever heard of. He not only avowed his contempt, but abhorrence, of this dreadful beginning, which opened to a more fatal issue. These gentlemen, in their wisdom and moderation, and through compassion for the poor, were beginning the same plan for the destruction of all property as had been begun in France. There the first steps began on the pretext of relieving the poor, by the abolition of places, and the robbery of the clergy; next after that came on the seizure of landed, and afterwards of monied, property; so that at length things were come to such a miserable pass in that unhappy country, that a peasant could not call a basket of eggs, nor a pail of milk, his own. He would, therefore, always negative every beginning that had a tendency to shake the settled order of things. The present appeared to him to be a dreadful beginning. It was also a useless one. It was beggary assisting beggary, and perfectly ridiculous. He compared it to an egg, which was, indeed, but a paltry thing, but no one could tell precisely what an egg might produce.

He wished gentlemen to state what the places were that were to be thus taxed, and what the sums would amount to. He was sure that if the government had no better resources than these, they must soon put an end to the war. When he considered the efficient offices, he considered also the dignity of necessity attached to them. Ministers were fugitive beings; here to-day, and gone to-morrow. Mankind itself was so, and therefore efficient offices must have efficient means, or the business would be neglected. A state must be supported by abilities, and abilities by rank and appearance. There was an old-fashioned author, whom he supposed the honourable gentleman who made the motion would treat as a strange, dogmatical, contemptible fellow—he meant Livy, the historian—who, speaking of some foreign ambassadors that had arrived at Rome, says, "Our nation may be the poorest upon earth, it is

true; but what magistrates or ambassadors of any country ever made a more noble or a more dignified appearance?" They were convinced that the dignity of the nation should be maintained, whatever might be the poverty of the people. Let any person reflect within himself, whether he would give the same wages to his game-keeper as to his footman, to his footman as to his groom. Does any gentleman give the same wages to a boy in his stable as to his cook, who entertains his friends when they join in festivity with him? Men in office must support their rank; they have expences of a different nature to those of ordinary people; they have the condition, dignity, duties and importance of their situation to attend to. Thus, then, a first lord of the treasury, the chief and most important office belonging to his majesty, was to receive no more than 2000*l* a-year. For his part, he believed the salaries of the servants of the crown were far from being adequate to their services; the crown had no mode of providing for them as formerly, as Lord Salisbury and other great ministers had been. He instanced Lord Somers having at one time received 35,000*l*. for his services, and deservedly. He was not able to set any precise value upon the abilities of any man. What could any man think would be an adequate compensation for the entire application of such talents as Mr. Erskine's, which he (Mr. Burke) certainly rated very high? He could not form any judgment upon the matter. He, therefore, that would hold out such a dangerous doctrine as the present, only robbed the poor, and unhinged that structure which protected them. If those gentlemen, who pretended to be such friends to the poor, would club together, they could raise more from their own private fortunes than could be gained by the proposed bill.

He contended, that as a matter of resource, the measure was trifling and inadequate; as a matter of policy, mistaken. It had not even the merit of being original: one similar to it had been formerly proposed, and he opposed it, as he would the present, which was vain and futile, tending to injure the poor; since it could have no other effect than

that of making them believe that government was doing every thing to plunge them into misery for its own ends. If the poor were to be relieved in no other manner, then let them submit to the will of God. No persons were more deserving of rewards than labourers for the public. To take from the present labourers, he thought, would be a great injustice; and he verily believed, that were the proposed bill to be adopted, the printing and paper would cost more than every thing that could be gained by it. He also considered the motion as delusive to the people; and supposed, that, if Russia should again give orders for the importation of Norwich manufactures into her dominions, ministers were to have their salaries back again. It was curious to observe, that the accidental and fluctuating circumstances of manufactures and of commerce were always made a ground of imputation on the executive government. Must the constitution, and the regulation of the state, be suspended every time that any foreign power chose to prohibit the importation of any manufacture, which might occasion a temporary distress? Money was not the means whereby distressed manufacturers were to be relieved; to give them money would be to make them idle, and prevent their return to industry. If they chanced, by misfortune, to fall into poverty or distress, their sole relief must be from Heaven.

Mr. Burke in the course of his speech said, in answer to a sarcasm thrown upon the minister's mode of coming into power, that it mattered not how he came in, or how he would go out, as far as related to the present subject. It was the peculiar province of the crown to measure and distribute the proportion of rewards to the merits of its servants, and he was astonished that the House should be called upon to interfere in a matter not within the scope of their ordinary functions. In his time he had seen many great men leave the stage with lean and inadequate fortunes. Perhaps it was expected that great men should serve the public as they are commanded to serve God Almighty, "with all their heart, with all their mind, with all their

soul, and with all their strength." He concluded by observing, that he came down to that House as it suited his humour; that he gave his opinions backward and forward without controul, *pro consilio defensu*, as well as *se defendendo*; therefore he should reprobate the motion *in toto*.

The House divided: Yeas 48: Noes 117. So it passed in the negative.

BILL TO ENABLE SUBJECTS OF FRANCE TO ENLIST AS SOLDIERS, &c.

April 11.

ON the 7th of April, Mr. Pitt moved "for leave to bring in a bill to enable subjects of France to enlist as soldiers in regiments to serve on the continent of Europe, and in certain other places, and to enable his majesty to grant commissions to subjects of France to serve and receive pay as officers in such regiments, or as engineers under certain restrictions." Leave was given to bring in the bill; and on the motion for its second reading on the 11th, it was most strongly opposed by Mr. Baker, on account of its wanting a specific statement of the numbers to be enlisted, and its allowing them to be quartered on British ground. Mr. Sheridan declared himself against the bill, and among other motives, alleged the certain death awaiting these men, if defeated; asking, at the same time, whether in such case we could venture to retaliate? Mr. Burke immediately replying, "Yes," was vehemently reproved by Mr. Sheridan, for letting fall an expression that might prove so fatal to our own troops, and lead to scenes of reciprocal bloodshed, unprecedented in the wars between Europeans. He strongly insisted on the danger of committing to the disposal of the crown an army of 50 or 60,000 men, all strangers and sworn enemies to the very name of liberty.

Mr. BURKE, with great gravity, professed himself sorry for the resentment which his having uttered the monosyllable "Yes," had occasioned in the mind of the honourable gentleman who had just sat down; he hoped, however, that the monosyllable that gave the honourable gentlemen offence, contained little or nothing of the deleterious poison imputed to it. With regard to passion, Mr. Burke said, he was too old to entertain any upon the subject of France. It had, for a considerable time, occupied much of his serious deliberation; and whatever he thought or felt upon it, was a momentary impulse, but the result of calm, settled, and well-considered judgment. This passion, if he felt any, might fairly be construed into malice prepense; and if he killed a man, under its influence, he was ready to admit, that he should be guilty of murder.

The smile or laugh alluded to by an honourable gentleman (Mr. Lambton), when he talked of the former despotism of France, he could seriously assure him, was not a smile of levity, but a smile of bitterness and sorrow, arising from a conviction that France must pass through many severe trials, must swallow many a bitter pill, before she could be restored to that happy despotism under which he once saw her flourish. That mild, temperate, chastised government which they experienced under the monarchy, he was afraid, would be very long before it would return; if indeed it were probable that it would ever return again. If he were indeed passionate, if he were inflamed by inveterate antipathy and national animosity against that unhappy country, he could wish them no greater misery than a lasting continuance of that under which they at present laboured. The condition of France at this moment was so frightful and horrible, that if a painter wished to pourtray a description of hell, he could not find so terrible a model, or a subject so pregnant with horror, and fit for his purpose. Milton, with all that genius which enabled him to excel in descriptions of this nature, would have been ashamed to have presented to his readers such a hell as France now was, or such a devil as a modern jacobin; he

would have thought his design revolting to the most unlimited imagination, and his colouring overcharged beyond all allowance for the licence even of poetical painting.

The assertion that this was a war of freedom against despotism, was equally fallacious and false. It was a war of perfidious rebellion against honourable loyalty, of infidelity against religion, of robbery against property, of murder against humanity, of barbarity against social order. He wished, if possible, to rescue the deluded people of that country from their infatuated freedom, a rescue, in the earnest desire of which every well-disposed person remaining in France must devoutly join. We talked here of the liberty of the Fleet, the liberty of the King's Bench, &c. from which the French also seemed to have taken all their ideas of freedom; for the liberty of France at this moment centered in a gaol. There was not an inhabitant who was certain of one moment in which he should not be removed from his own house to one of those dens of freedom; and how happy must they find themselves in a general gaol delivery!

Mr. Burke observed, that an honourable gentleman had asked, whether it was the intention of his majesty's ministers to re-establish the old despotism of France, by sending French troops into that country? What were the objects of the emigrants who would enter into our service? To liberate their wives and their children, to be restored to their properties, to get possession of their vineyards, their olive-trees, and their fig-trees. This was the horrible old despotism of France. Despotism and liberty, as the honourable gentleman made use of these terms, were mere words. In the speeches of many gentlemen for some time past, the words liberty and despotism formed a very considerable ingredient; so much so, indeed, that it reminded him of a lawyer, who, while making a very laboured harangue, was twirling a string from side to side with a great degree of violence. Some person having found an opportunity, conveyed away the string, whereupon his eloquence instantly failed him, and he loudly exclaimed, that "they had cut short

the thread of his discourse." Thus it was with those gentlemen; take away the words liberty and despotism, and they could not get on a step farther. With them, if a man wished to preserve his wife and children from the guillotine, and retire into the bosom of his family — it was despotism. If a man was desirous to recover the estates transmitted to him by a long line of ancestors — it was despotism. If a husbandman wished to repose in his own farm under his fig-tree, his olive, or his vine — that was despotism. If a farmer chose to keep five bushels of corn for the use of himself and his family — that also was despotism. In short, every thing was despotism which did not partake of that hideous system which was now the basis of what were termed the liberties of France.

It was not for any particular system of government that he contended, but for some government. Let it be a pure monarchy, a democracy, or an aristocracy, or all mixed, he cared not, provided a government did exist, the first principle of which must necessarily be security to property, because, for the protection of property, all governments were instituted. First, therefore, restore property, and afterwards let that property find a government for itself. The number of its inhabitants constituted the strength of a nation, but it was property alone on which government was formed. If the formation of government was committed to the no-property people, the first thing they would do, obviously would be to plunder those who had property, and the next thing would be to plunder and massacre each other. After all, if it were asked, did he prefer property to virtue? his answer would be no. To honour? — No. To morals? — No. To arts and literature? — No. But he respected property in as much as it was the basis upon which they were all erected — the soul that animated, the genius that protected them. In France were the poor better treated than the rich? Were they not forced to rise *en masse?* To account for every bushel of corn in their possession? The shopkeeper was put in requisition to make shoes for the armies. No labourer knew whether he should

enjoy for a day his earnings, or even his personal liberty or his life. The original fault in the proceedings of the French Revolution was, that property was not permitted to have a vote. Every effort had been made to exclude it from legislation.

Reverting to the precise question in debate, Mr. Burke thanked the minister cordially for the wisdom and justice of the measure, and made an appeal to Mr. Lambton and other gentlemen, on the situation in which they, and men of great property like themselves, must be placed, should the system of jacobinism ever take place in this country; and that it would take place, there was real ground for apprehension, unless all those who had a stake to risk of their own, as well as a general regard for the interests of the British empire, took some pains by their influence to preserve order, enforce due subordination, and maintain quiet and tranquillity, by convincing the people that their true happiness consisted in a continuance of that constitution and that government, under which they daily experienced so many blessings. Without wishing to be a prophet, Mr. Burke said, he had no difficulty in declaring, that if French property was not restored, property in England would not be worth ten years purchase. He said he was sorry to find Mr. Sheridan determined to oppose this bill. He admired and feared that gentleman's talents, and regretted that he should meet with opposition from him.

Report of the Committee of Managers on the Causes of the Duration of Mr. Hastings's Trial.

April 30.

ON the 5th of March, upon the motion of Mr. Burke, it was ordered, "that a committee be appointed to inspect the Lords' Journals, in relation to their proceedings on the trial of

Warren Hastings, Esq. and to report what they find therein to the House; and that the committee of managers be the said committee." On the 17th, it was also ordered, on the motion of Mr. Burke, "that the said Committee do report to the House the several matters which have occurred since the commencement of the said prosecution, and which have, in their opinion, contributed to the duration thereof to the present time, with their observations thereupon." On the 17th of April, Mr. Burke presented the report of the committee to the House, by whom it was ordered to be printed for the use of the members. On the 29th, Mr. Burke, the chairman of the committee, informed the House, that it would be proper to make some alterations in the said report, and some additions thereto, in consequence of which, the order for printing the report was discharged. The question being then put, that the said report be re-committed, the House divided: Yeas 52: Noes 20.

On the 30th of April, Mr. Burke informed the House, that the committee had made some alterations in the said Report, and some additions thereto; and he read the report in his place; and afterwards delivered the same, together with an Appendix thereunto, in at the clerk's table; when the Report was read, and is as followeth: viz.

REPORT FROM THE COMMITTEE OF THE HOUSE OF COMMONS APPOINTED TO INSPECT THE LORDS' JOURNALS, IN RELATION TO THEIR PROCEEDINGS ON THE TRIAL OF WARREN HASTINGS, ESQ. AND TO REPORT WHAT THEY FIND THEREIN TO THE HOUSE; WHICH COMMITTEE WERE THE MANAGERS APPOINTED TO MAKE GOOD THE ARTICLES OF IMPEACHMENT AGAINST THE SAID WARREN HASTINGS, ESQ. AND WHO WERE AFTERWARDS INSTRUCTED TO REPORT THE SEVERAL MATTERS WHICH HAVE OCCURRED SINCE THE COMMENCEMENT OF THE SAID PROSECUTION, AND WHICH HAVE, IN THEIR OPINION, CONTRIBUTED TO THE DURATION THEREOF TO THE PRESENT TIME, WITH THEIR OBSERVATIONS THEREUPON.

YOUR committee has received two powers from the House — the first on the 5th of March 1794, to inspect the Lords journals, in relation to their proceedings on the trial of Warren Hastings, Esq. and to report what they find therein to the House

The second is an instruction given on the 17th day of the same month of March, to this effect: That your committee do report to this House the several matters which have occurred since the commencement of the said prosecution, and which have, in their opinion, contributed to the duration thereof to the present time, with their observations thereupon.

Your committee is sensible, that the duration of the said trial, and the causes of that duration, as well as the matters which have therein occurred, do well merit the attentive consideration of this House; we have therefore endeavoured, with all diligence, to employ the powers that have been granted, and to execute the orders that have been given to us, and to report thereon as speedily as possible, and as fully as the time would admit.

Your committee has considered, first, the mere fact of the duration of the trial, which they find to have commenced on the 13th day of February 1788, and to have continued by various adjournments to the said 17th of March.

During that period, the sittings of the court have occupied one hundred and eighteen days, or about one third of a year.

The distribution of the sitting-days in each year is as follows:

	Days
In the year 1788, the court sat	35
1789, ——	17
1790, ——	14
1791, ——	5
1792, ——	22
1793, ——	22
1794, to the 1st of March, inclusive	3
Total	118

Your committee then proceeded to consider the causes of this duration with regard to time, as measured by the

calendar, and also as measured by the number of days occupied in actual sitting.

They find, on examining the duration of the trial, with reference to the number of *years* which it has lasted, that it has been owing to several prorogations, and to one dissolution of parliament; to discussions which are supposed to have arisen in the House of Peers on the legality of the continuance of impeachments from parliament to parliament; that it has been owing to the number and length of the adjournments of the court, particularly the adjournments on account of the circuit, which adjournments were interposed in the middle of the session, and the most proper time for business; that it has been owing to one adjournment made in consequence of a complaint of the prisoner against one of your managers, which took up a space of ten days; that two days adjournment were made on account of the illness of certain of the managers; and, as far as your committee can judge, two sitting-days were prevented by the sudden and unexpected dereliction of the defence of the prisoner at the close of the last session, your managers not having been then ready to produce their evidence in reply, nor to make their observations on the evidence produced by the prisoner's counsel, as they expected the whole to have been gone through before they were called on for their reply. In this session your committee computes that the trial was delayed about a week or ten days. The Lords waited for the recovery of the Marquis Cornwallis, the prisoner wishing to avail himself of the testimony of that noble person.

With regard to the one hundred and eighteen days employed in actual sitting, the distribution of the business was in the manner following: there were spent,

	Days
In reading the articles of impeachment and the defendant's answer, and in debate on the mode of proceeding - - - - - - - - -	3
Opening speeches and summing up by the managers	19
Documentary and oral evidence by the managers	51

	Days
Brought forward - - - - -	73
Opening speeches and summing-up by the defendant's counsel, and defendant's addresses to the court	22
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The other head, namely, that the trial has occupied one hundred and eighteen days, or nearly one third of a year, —this your committee conceive to arise from the following immediate causes:

First, the nature and extent of the matter to be tried.

Secondly, the general nature and quality of the evidence produced. It was principally documentary evidence contained in papers of great length, the whole of which was often required to be read, when brought to prove a single short fact. Under the head of evidence must be taken into consideration the number and description of the witnesses examined and cross-examined.

Thirdly, and principally, the duration of the trial is to be attributed to objections taken by the prisoner's counsel to the admissibility of several documents and persons offered as evidence on the part of the prosecution. These objections amounted to sixty-two: they gave rise to several debates, and to twelve references from the court to the judges.

On the part of the managers the number of objections was small; the debates upon them were short: there was not upon them any reference to the judges; and the Lords did not even retire upon any of them to the chamber of parliament.

This last cause of the number of sitting-days your committee considers as far more important than all the rest. The questions upon the admissibility of evidence; the manner in which these questions were stated and were decided; the modes of proceeding; the great uncertainty of the principle upon which evidence in that court is to be

admitted or rejected; all these appear to your committee materially to affect the constitution of the House of Peers, as a court of judicature, as well as its powers, and the purposes it was intended to answer in the state. The Peers have a valuable interest in the conservation of their own lawful privileges: but this interest is not confined to the Lords. The Commons ought to partake in the advantage of the judicial rights and privileges of that high court. Courts are made for the suitors, and not the suitors for the court. The conservation of all other parts of the law, the whole indeed of the rights and liberties of the subject, ultimately depends upon the preservation of the law of parliament in its original force and authority.

Your committee had reason to entertain apprehensions, that certain proceedings in this trial may possibly limit and weaken the means of carrying on any future impeachment of the Commons. As your committee felt these apprehensions strongly, they thought it their duty to begin with humbly submitting facts and observations, on the proceedings concerning evidence, to the consideration of this House, before they proceed to state the other matters which come within the scope of the directions which they have received.

To enable your committee the better to execute the task imposed upon them in carrying on the impeachment of this House, and to find some principle on which they were to order and regulate their conduct therein, they found it necessary to look attentively to the jurisdiction of the court in which they were to act for this House, and into its laws and rules of proceeding, as well as into the rights and powers of the House of Commons in their impeachments.

Relation of the Judges, &c. to the Court of Parliament.

Upon examining into the course of proceedings in the House of Lords,* and into the relation which exists be-

* 4 Inst. p. 4.

tween the Peers on the one hand, and their attendants and assistants, the judges of the realm, barons of the exchequer of the coif, the king's learned counsel, and the civilians masters of the chancery, on the other; it appears to your committee, that these judges, and other persons learned in the common and civil laws, are no integrant and necessary part of that court. Their writs of summons are essentially different; and it does not appear that they or any of them have, or of right ought to have, a deliberative voice, either actually or virtually, in the judgments given in the high court of parliament. Their attendance in that court is solely ministerial; and their answers to questions put to them, are not to be regarded as declaratory of the law of parliament, but are merely consultory responses, in order to furnish such matter (to be submitted to the judgment of the peers) as may be useful in reasoning by analogy, so far as the nature of the rules, in the respective courts of the learned persons consulted, shall appear to the House to be applicable to the nature and circumstances of the case before them, and no otherwise.

Jurisdiction of the Lords.

Your committee finds, that in all impeachments of the Commons of Great Britain for high crimes and misdemeanors, before the peers in the high court of parliament, the peers are not triers or jurors only, but by the ancient laws and constitution of this kingdom, known by constant usage, are judges both of law and fact; and we conceive that the Lords are bound not to act in such a manner as to give rise to an opinion that they have virtually submitted to a division of their legal powers; or that, putting themselves into the situation of mere triers or jurors, they may suffer the evidence in the cause to be produced or not produced before them, according to the discretion of the judges of the inferior courts.

Law of Parliament.

Your committee finds, that the Lords in matter of appeal or impeachment in parliament, are not of right obliged to proceed according to the course or rules of the Roman civil law, or by those of the law or usage of any of the inferior courts in Westminster-hall; but by the law and usage of parliament. And your committee finds, that this has been declared in the most clear and explicit manner by the House of Lords, in the year of our Lord 1387 and 1388, in the eleventh year of king Richard the Second.

Upon an appeal in parliament then depending against certain great persons, peers and commoners, the said appeal was referred to the justices and other learned persons of the law: "At which time" (it is said in the record *) "that the justices and serjeants, and others the learned in the law civil, were charged, by order of the king our sovereign aforesaid, to give their faithful counsel to the lords of the parliament, concerning the due proceedings in the cause of the appeal aforesaid. The which justices, serjeants, and the learned in the law of the kingdom, and also the learned in the law civil, have taken the same into deliberation; and have answered to the said lords of parliament, that they had seen and well considered the tenour of the said appeal; and they say, that the same appeal was neither made nor pleaded according to the order which the one law or the other requires. Upon which the said lords of parliament have taken the same into deliberation and consultation, and by the assent of our said lord the king, and of their common agreement, it was declared, that in so high a crime as that which is charged in this appeal, which touches the person of our lord the king, and the state of the whole kingdom, perpetrated by persons who are peers of the kingdom, along with others, the cause shall not be tried in any other place but in parliament, nor by any other law than the law and course of

* Rolls Parl. Vol. iii. p. 236.

parliament; and that it belongeth to the lords of parliament, and to their franchise and liberty by the ancient custom of the parliament, to be judges in such cases; and in these cases to judge by the assent of the king; and thus it shall be done in this case by the award of parliament: because the realm of England has not been heretofore, nor is it the intention of our said lord the king and the lords of parliament, that it ever should be governed by the law civil: and also it is their resolution, not to rule or govern so high a cause as this appeal is, which cannot be tried any where but in parliament, as hath been said before, by the course, process, and order used in any courts or place inferior, in the same kingdom; which courts and places are not more than the executors of the antient laws and customs of the kingdom, and of the ordinances and establishments of parliament — It was determined by the said lords of parliament, by the assent of our said lord the king, that this appeal was made and pleaded well and sufficiently, and that the process upon it is good and effectual, according to the law and course of parliament, and for such they decree and adjudge it."

And your committee finds, that toward the close of the same parliament, the same right was again claimed and admitted as the special privilege of the peers, in the following manner: — "In this parliament, all the lords then present, spiritual as well as temporal, claimed as their franchise that the weighty matters moved in this parliament, and which shall be moved in other parliaments in future times, touching the peers of the land, shall be managed, adjudged, and discussed by the course of parliament, and in no sort by the law civil, or by the common law of the land, used in the other lower courts of the kingdom, which claim, liberty, and franchise, the king graciously allowed and granted to them in full parliament." *

Your committee finds, that the commons, having at that time considered the appeal above-mentioned, approved the

* Rol. Parl. Vol. iii. p. 244. § 7.

proceedings in it; and, as far as in them lay, added the sanction of their accusation against the persons who were the objects of the appeal. They also, immediately afterwards, impeached all the judges of the common pleas, the chief baron of the exchequer, and other learned and eminent persons, both peers and commoners; upon the conclusion of which impeachment it was that the second claim was entered. In all the transactions aforesaid, the commons were acting parties; yet neither then, nor ever since, have they made any objection or protestation that the rule laid down by the lords, in the beginning of the session of 1388, ought not to be applied to the impeachments of commoners as well as peers. In many cases they have claimed the benefit of this rule; and in all cases they have acted and the peers have determined upon the same general principles. The peers have always supported the same franchises; nor are there any precedents upon the records of parliament subverting either the general rule or the particular privilege, so far as the same relates either to the course of proceeding or to the rule of law, by which the lords are to judge.

Your committee observes also, that in the commissions to the several lords high stewards who have been appointed on the trials of peers impeached by the commons, the proceedings are directed to be had according to the law and custom of the kingdom, *and the custom of parliament*; which words are not to be found in the commissions for trying upon indictments.

"As every court of justice," (says Lord Coke*) "hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c. So the high court of parliament, *suis propriis legibus & consuetudinibus subsistit*, it is by the *lex & consuetudo parliamenti* that all weighty matters in any parliament moved, concerning the peers of the realm, or commons in parliament assembled, ought to be determined,

* 4 Inst. p. 15.

adjudged, and discussed by the course of the parliament, and not by the civil law, nor yet by the common laws of this realm used in more inferior courts." — And after founding himself on this very precedent of the 11th of Richard II. he adds, "*This is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but secundum legem & consuetudinem parliamenti: and so the Judges in divers parliaments have confessed.*"

Rule of Pleading.

Your committee do not find, that any rules of pleading, as observed in the inferior courts, have ever obtained in the proceedings of the high court of parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your committee find, that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any impeachment in parliament, as not coming within the form of the pleading; and although a reservation or protest is made by the defendant (matter of form, as we conceive) 'to the generality, uncertainty, and insufficiency of the articles of impeachment;' yet no objections have, in fact, been ever made in any part of the record; and when verbally they have been made (until this trial), they have constantly been over-ruled.

The trial of Lord Strafforde is one of the most important æras in the history of parliamentary judicature.* In that trial, and in the dispositions made preparatory to it, the process on impeachments was, on great consideration, research, and selection of precedents, brought very nearly to the form which it retains at this day; and great and important parts of parliamentary law were then laid down. The Commons at that time made new charges, or amended the old, as they saw occasion. Upon an application from

* 16 Ch. I. 1640.

the Commons to the Lords, that the examinations taken by their lordships, at their request, might be delivered to them, for the purpose of a more exact specification of the charge they had made, on delivering the message of the Commons, Mr. Pim, amongst other things, said, as it is entered in the Lords' Journals *, "According to the clause of reservation in the conclusion of their charge, they (the Commons) will add to the charges, not to the matter in respect of comprehension, extent, or kind, but only to reduce them to more particularities, that the Earl of Strafforde might answer with the more clearness and expedition —not *that they are bound by this way of SPECIAL charge; and therefore they have taken care in their House, upon protestation, that this shall be no prejudice to bind them from proceeding in GENERAL and other cases, and that they are not to be ruled by proceedings in other courts, which protestation they have made for the preservation of the power of parliament; and they desire that the like care may be had in your Lordships House.*"

This protestation is entered on the Lords' Journals. Thus careful were the Commons that no exactness used by them for a temporary accommodation, should become an example derogatory to the larger rights of parliamentary process.

At length the question of their being obliged to conform to any of the rules below came to a formal judgment †. In the trial of Dr. Sacheverell, March 10th, 1709, the Lord Nottingham "desired their Lordships opinion, whether he might propose a question to the judges *here* [in Westminster-hall]. Thereupon the Lords being moved to adjourn, adjourned to the House of Lords, and on debate [as appears by a note] it was agreed, that the question should be proposed in Westminster-hall." Accordingly, when the Lords returned the same day into the hall, the

* Lords' Journals, Vol. iv. p. 133.

† Lords' Journals, Vol. xix. p. 98.

question was put by Lord Nottingham, and stated to the judges by the lord chancellor.

"Whether by the *law of England*, and constant practice in all prosecutions by *indictment and information*, for crimes and misdemeanors, by writing or speaking, the particular words supposed to be written or spoken must not be expressly specified in the indictment or information."

On this question, the judges, *seriatim*, and in open court, delivered their opinion: the substance of which was, "That by the laws of England, and the constant practice in Westminster-hall, the words ought to be expressly specified in the indictment or information."

Then the Lords adjourned, and did not come into the Hall until the 20th. In the intermediate time they came to resolutions on the matter of the question put to the judges. Dr. Sacheverell, being found guilty, moved in arrest of judgment upon two points: — The first, which he grounded on the opinion of the judges, and which your committee thinks most to the present purpose, was, "That no intire clause, or sentence, or expression, in either of his sermons or dedications, is particularly set forth in his impeachment, which he has already heard the judges declare to be necessary in all cases of indictments or informations."

On this head of objection, the lord chancellor, on the 23d of March, agreeably to the resolutions of the Lords of the 14th and 16th of March, acquainted Dr. Sacheverell:

"That on occasion of the question before put to the judges in Westminster-hall, and their answer thereto, their lordships had fully debated and considered of that matter, and had come to the following resolution:

"That this House will proceed to the determination of the impeachment of Dr. Henry Sacheverell, according to the *law of the land, and the law and usage of parliament.*

"And afterwards to this resolution:

"That by the *law and usage of parliament* in prosecutions for high crimes and misdemeanors, by writing or speaking, the particular words, supposed to be criminal, are *not necessary* to be expressly specified in such impeachment.

"So that, in their lordships opinion, the law and usage of the high court of parliament, being a *part of the law of the land*, and that usage not requiring that words should be exactly specified in impeachments, the answer of the judges, which related only to the course of *indictments and informations*, does not in the least affect your case."

On this solemn judgment concerning the law and usage of parliament, it is to be remarked; first, that the impeachment itself is not to be presumed inartificially drawn. It appears to have been the work of some of the greatest lawyers of the time, who were perfectly versed in the manner of pleading in the courts below; and would naturally have imitated their course, if they had not been justly fearful of setting an example, which might hereafter subject the plainness and simplicity of a parliamentary proceeding to the technical subtilties of the inferior courts: secondly, that the question put to the judges, and their answer, were strictly confined to the law and practice below; and that nothing in either had a tendency to their delivering an opinion concerning parliament, its laws, its usages, its course of proceeding, or its powers: thirdly, that the motion in arrest of judgment, grounded on the opinion of the judges, was made only by Dr. Sacheverell himself, and not by his counsel, men of great skill and learning, who, if they thought the objections had any weight, would undoubtedly have made and argued them.

Here, as in the case of the 11th of King Richard II., the judges declared unanimously, that such an objection would be fatal to such a pleading in any indictment or information: but the lords, as on the former occasion, overruled this objection, and held the article to be good and valid, notwithstanding the report of the judges concerning the mode of proceeding in the courts below.

Your committee finds, that a protest, with reasons at large, was entered by several lords against this determination of their court*. It is always an advantage to those

* Lords' Journals, Vol. xix. p. 106.

who protest, that their reasons appear upon record, whilst the reasons of the majority who determine the question do not appear. This would be a disadvantage of such importance, as greatly to impair, if not totally to destroy, the effect of precedent as authority, if the reasons which prevailed were not justly presumed to be more valid than those which have been obliged to give way; the former having governed the final and conclusive decision of a competent court. But your committee, combining the fact of this decision with the early decision just quoted, and with the total absence of any precedent of an objection, before that time or since, allowed to pleading, or what has any relation to the rules and principles of pleading as used in Westminster-hall, has no doubt that the House of Lords was governed in the 9th of Anne by the very same principles which it had solemnly declared in the 11th of Richard II.

But besides the presumption in favour of the reasons which must be supposed to have produced this solemn judgment of the peers, contrary to the practice of the courts below, as declared by all the judges — it is probable, that the lords were unwilling to take a step, which might admit that any thing in that practice should be received as their rule.

It must be observed, however, that the reasons against the article, alleged in the protest, were by no means solely bottomed in the practice of the courts below, as if the main reliance of the protestors was upon that usage. The protesting minority maintained, that it was not agreeable to *several precedents in parliament;* of which they cited many in favour of their opinion. — It appears by the Journals, that the clerks were ordered to search for precedents, and a committee of peers was appointed to inspect the said pre-precedents, and to report upon them — and that they did inspect and report accordingly. But the report is not entered on the Journals. It is, however, to be presumed that the greater number and the better precedents supported the judgment.

Allowing, however, their utmost force to the precedents

there cited, they could serve only to prove, that in the *case of words* (to which alone, and not the case of a *written* libel, the precedents extended) such a special averment, according to the tenor of the words, had been used; but not that it was necessary, or that ever any plea had been rejected upon such an objection.

As to the course of parliament resorted to for authority in this part of the protest, the argument seems rather to affirm than to deny the general proposition, that its own course, and not that of the inferior courts had been the rule and law of parliament.

As to the objection taken in the protest, drawn from natural right, the lords knew, and it appears in the course of the proceeding *, that the whole of the libel had been read at length, as appears from p. 655. to p. 666. So that Dr. Sacheverell had *substantially* the same benefit of any thing which could be alleged in the extenuation or exculpation, as if his libellous sermons had been entered *verbatim* upon the recorded impeachment. It was adjudged sufficient to state the crime *generally* in the impeachment. The libels were given in *evidence;* and it was not then thought of, that nothing should be given in evidence which was not specially charged in the impeachment.

But whatever their reasons were, (great and grave they were, no doubt,) such, as your committee has stated it, is the *judgment* of the peers on the law of parliament, as a part of the law of the land. It is the more forcible, as concurring with the judgment in the 11th of Richard II., and with the total silence of the Rolls and Journals concerning any objection to pleading ever being suffered to vitiate an impeachment, or to prevent evidence being given upon it on account of its generality, or any other failure.

Your committee do not think it probable that, even before this adjudication, the rules of pleading below could ever have been adopted in a parliamentary proceeding, when it is considered that the several statutes of jeofails,

* State Trials, Vol. v.

not less than twelve in number, have been made for the correction of an over-strictness in pleading to the prejudice of substantial justice *; yet in no one of these is to be discovered the least mention of any proceeding in parliament. There is no doubt, that the legislature would have applied its remedy to that grievance in parliamentary proceedings, if it had found those proceedings embarrassed with what Lord Mansfield, from the Bench, and speaking of the matter of these statutes, very justly calls "disgraceful subtilties."

What is still more strong to the point, your committee finds, that in the 7th of William III., ch. 3. § 12., an act was made for the regulating of trials for treason and misprision of treason, containing several regulations for reformation of proceedings at law, both as to matters of form and substance, as well as relative to evidence. It is an act thought most essential to the liberty of the subject; yet in this high and critical matter, so deeply affecting the lives, properties, honours, and even the inheritable blood of the subject, the legislature was so tender of the high powers of this high court, deemed so necessary for the attainment of the great objects of its justice, so fearful of enervating any of its means, or circumscribing any of its capacities, even by rules and restraints the most necessary for the inferior courts, that they guarded against it by an express proviso, "that neither this act, nor any thing therein contained, shall any ways extend to *any impeachment or other proceedings in parliament in any kind whatsoever.*"

Conduct of the Commons in Pleading.

This point being thus solemnly adjudged in the case of Dr. Sacheverell, and the principles of the judgment being in agreement with the whole course of parliamentary proceedings, the managers for this House have ever since considered it as an indispensable duty, to assert the same

* Statutes at large, from 12 Ed. I. to 16 and 17 Ch. II.

principle in all its latitude upon all occasions on which it could come in question — and to assert it with an energy, zeal, and earnestness, proportioned to the magnitude and importance of the interest of the Commons of Great Britain in the religious observation of the rule, *that the law of parliament, and the law of parliament only, should prevail in the trial of their impeachments.*

In the year 1715, (1 Geo. I.) the Commons thought proper to impeach of high treason the lords, who had entered into the rebellion of that period *. This was about six years after the decision in the case of Sacheverell. On the trial of one of these lords (the Lord Wintoun) after verdict, the prisoner moved in arrest of judgment, and excepted against the impeachment for error, on account of the treason therein laid "not being described with sufficient certainty — the day on which the treason was committed not having been alleged." His council was heard to this point. They contended, 'that the forfeitures in cases of treason are very great; and therefore they humbly conceived, that the accusation ought to contain all the certainty it is capable of; that the prisoner may not by *general allegations* be rendered incapable to defend himself in a case which may prove fatal to him. That they would not trouble their lordships with citing authorities; for they believed there is not one gentleman of the long robe but will agree that an indictment for any capital offence to be erroneous, if the offence be not alleged to be committed on a certain day.' — "That this impeachment set forth only that in or about the months of September, October or November 1715" — 'the offence charged in the impeachment had been committed. The counsel argued that a proceeding by impeachment, is a proceeding at the common law, for *lex parliamentaria* is a part of common law, and they submitted whether there is not the same certainty required in one method of proceeding at common law as in another.'

* State Trials, Vol. vi. p. 17.

The matter was argued elaborately and learnedly, not only on the general principles of the proceedings below, but on the inconvenience and possible hardships attending this uncertainty. They quoted Sacheverell's case, in whose impeachment "the precise days were laid when the doctor preached each of these two sermons: and that by a like reason a certain day ought to be laid in the impeachment when this treason was committed; and that the authority of Dr. Sacheverell's case seemed so much stronger than the case in question, as the crime of treason is higher than that of a misdemeanor."

Here the managers for the Commons brought the point a second time to an issue, and that on the highest of capital cases; an issue, the event of which was to determine for ever, whether their impeachments were to be regulated by the law, as understood and observed in the inferior courts. — Upon the usage below there was no doubt; the indictment would unquestionably have been quashed: but the managers for the Commons stood forth upon this occasion with a determined resolution, and no less than four of them *seriatim* rejected the doctrine contended for by Lord Wintoun's counsel. They were all eminent members of parliament, and three of them great and eminent lawyers, namely, the then attorney-general, Sir William Thompson, and Mr. Cowper.

Mr. Walpole said, "those learned gentlemen (Lord Wintoun's counsel) *seem to forget in what court they are.* "They have taken up so much of your lordships' time in quoting of authorities, and using arguments to show your lordships what would quash an indictment in the *courts below*, that they seemed to forget they are now in a *court of parliament, and on an impeachment of the Commons of Great Britain.* For, should the Commons admit all that they have offered, it will not follow that the impeachment of the Commons is insufficient; and I must observe to your lordships, that neither of the learned gentlemen have offered to produce one instance relative to an impeachment; I mean to shew that the sufficiency of an impeachment was

never called in question for the generality of the charge, or that any instance of that nature was offered at before. The Commons don't conceive, that, if this exception would quash an indictment, it would therefore make the impeachment insufficient. I hope it never will be allowed here as a reason, that what quashes an indictment in the courts below, will make insufficient an impeachment brought by the Commons of Great Britain."

The Attorney-general supported Mr. Walpole in affirmance of this principle. He said, "I would follow the steps of the learned gentleman who spoke before me, and I think he has given a good answer to these objections. I would take notice that we are upon an impeachment, not upon an indictment. The courts below have set forms to themselves, which have prevailed for a long course of time, and thereby are become the forms by which those courts are to govern themselves; but it never was thought that the forms of those courts had any influence on the proceedings of parliament. In Richard II.'s time, it is said in the records of parliament, that proceedings in parliament are not to be governed by the forms of Westminster-hall. We are in the case of an impeachment, and in the court of parliament. Your lordships have already given judgment against six upon this impeachment, and it is warranted by the precedents in parliament; therefore we insist that the articles are good in substance."

Mr. Cowper.—"They (the counsel) cannot but know that the usages of parliaments are part of the laws of the land, although they differ in many instances from the common law, as practised in the inferior courts, in point of form.

"My Lords, if the Commons, in preparing articles of impeachment, should govern themselves by precedents of indictments, in my humble opinion they would depart from the ancient, nay, the constant usage and practice of parliament. It is well known that the form of an impeachment has very little resemblance to that of an indictment: and I believe the Commons will endeavour to preserve the difference, by adhering to their own precedents."

Sir William Thompson. — "We must refer to the forms and proceedings in the court of parliament, and which must be owned to be part of the law of the land. It has been mentioned already to your lordships, that the precedents in impeachments are not so nice and precise in form as in the inferior courts; and we presume your lordships will be governed by the forms of your own court (especially forms that are not essential to justice) as the courts below are by theirs; which courts differ one from the other in many respects as to their forms of proceedings, and the practice of each court is esteemed as the law of that court."

The attorney-general, in reply, maintained his first doctrine — "There is no uncertainty in it *that can be to the prejudice of the prisoner;* we insist it is according to the *forms of parliament;* he has pleaded to it, and your lordships have found him guilty."

The opinions of the judges were taken in the House of Lords on the 19th of March 1715, upon two questions which had been argued in arrest of judgment, grounded chiefly on the practice of the courts below.

To the first the judges answered: "*It is necessary* that there be a *certain* day laid in such indictments on which the fact is alledged to be committed; and that alledging in such indictments that the fact was committed at or about a certain day, would not be sufficient."

To the second they answered:

"That although a day certain, when the fact is supposed to be done, be alledged in such indictments, yet it is not necessary upon the trial to prove the fact to be committed upon *that day;* but it is sufficient if proved to be done *on any other day before* the indictment found."

Then it was "agreed by the House, and ordered, that the lord high steward be directed to acquaint the prisoner at the bar in Westminster-hall,

"That the Lords have considered of the matters moved in arrest of judgment, and are of opinion, that they are not sufficient to arrest the same, but that the *impeachment* is

sufficiently certain in point of time *according to the form of impeachments in parliament.*" *

On this final adjudication (given after solemn argument, and after taking the opinion of the judges) in affirmance of the law of parliament against the undisputed usage of the courts below, your committee has to remark, 1st, The preference of the custom of parliament to the usage below. By the very latitude of the charge, the parliamentary accusation gives the prisoner fair notice to prepare himself upon all points; whereas there seems something ensnaring in the proceedings upon indictment, which fixing the specification of a day certain for the treason or felony as absolutely necessary in the charge, gives notice for preparation only on *that day;* whilst the prosecutor has the whole range of time antecedent to the indictment to alledge, and give evidence of facts against the prisoner. It has been usual, particularly in later indictments, to add, " at several other times." But the strictness of naming one day is still necessary, and the want of the larger words would not quash the indictment. 2dly, A comparison of the extreme rigour and exactness required in the more *formal* part of the proceeding, (the indictment,) with the extreme laxity used in the *substantial* part, (that is to say, the evidence received to prove the fact,) fully demonstrates that the partizans of those forms would put shackles on the high court of parliament with which they are not willing, or find it wholly impracticable, to bind themselves. 3dly, That the latitude of departure from the letter of the indictment (which holds in other matters besides this) is in appearance much more contrary to natural justice than any thing which has been objected against the evidence offered by your managers, under a pretence that it exceeded the limits of pleading. For in the case of indictments below, it must be admitted that the prisoner may be unprovided with proof of an *alibi*, and other material means of de-

* Lords' Journals, Vol. xx. p. 316.

fence, or may find some matters unlooked for produced against him, by witnesses utterly unknown to him: whereas nothing was offered to be given in evidence under any of the articles of this impeachment, except such as the prisoner must have had perfect knowledge of, the whole consisting of matters sent over by himself to the court of directors, and authenticated under his own hand. No substantial injustice or hardship of any kind could arise from our evidence under our pleading; whereas in theirs, very great and serious inconveniencies might well happen.

Your committee has further to observe, that in the case of Lord Wintoun, as in the case of Dr. Sacheverell, the Commons had in their managers persons abundantly practised in the law as used in the inferior jurisdictions, who could easily have followed the precedents of indictments, if they had not purposely, and for the best reasons, avoided such precedents.

A great writer on the criminal law, Justice Foster, in one of his discourses *, fully recognizes those principles for which your managers have contended, and which have to this time been uniformly observed in parliament. In a very elaborate reasoning on the case of a trial in parliament, (the trial of those who had murdered Edward the Second,) he observes thus: "It is *well known*, that in *parliamentary* proceedings of this kind, *it is, and ever was*, sufficient that matters appear with proper light and certainty to a *common understanding*, without that minute exactness which is required in criminal proceedings in Westminster-hall. In these cases the rule has always been *loquendum ut vulgus*." And in a note he says, "In the proceeding against Mortimer in this parliament, *so little regard was had to the forms used in legal proceedings*, that he who had been frequently summoned to parliament as a baron, and had lately been created Earl of March, is stiled through the whole record merely Roger de Mortimer."

* Discourse iv. p. 389.

The departure from the common forms in the first case alluded to by Foster, *viz.* the trial of Berkley, Mautravers, &c. for treason, in the murder of * Edward the Second, might be more plausibly attacked, because they were tried, though in parliament, by a jury of freeholders; which circumstance might have given occasion to justify a nearer approach to the forms of indictments below. But no such forms were observed, nor in the opinion of this able judge ought they to have been observed.

Publicity of the Judges' Opinions.

It appears to your committee, that from the 30th year of King Charles the Second, until the trial of Warren Hastings, Esq. in all trials in parliament, as well upon impeachments of the Commons as on indictments brought up by *certiorari*, when any matter of law hath been agitated at the bar, or in the course of trial hath been stated by any lord in the court, it hath been the prevalent custom to state the same in open court. Your committee has been able to find, since that period, no more than one precedent (and that a precedent rather in form than in substance) of the opinions of the judges being taken privately, except when the case on both sides has been closed, and the lords have retired to consider of their verdict, or of their judgment thereon. Upon the soundest and best precedents, the lords have improved on the principles of publicity and equality, and have called upon the parties severally to argue the matter of law, previously to a reference to the judges, who, on their parts, have afterwards, in *open court*, delivered their opinions, often by the mouth of one of the judges, speaking for himself and the rest, and in their presence: and sometimes all the judges have delivered their opinion *seriatim*, (even when they have been unanimous in it,) together with their reasons upon which their opinion had been founded. This, from the most

* Parl. Rolls, Vol. ii. p. 57. 4 Ed. III. A. D. 1330.

early times, has been the course in all judgments in the House of Peers. Formerly even the record contained the reasons of the decision. "The reason wherefore (said Lord Coke*) the records of parliaments have been so highly extolled is, that therein is set down, in cases of difficulty, not only the judgment and resolution, but *the reasons and causes of the same* by so great advice."

In the 30th of Charles the Second, during the trial of Lord Cornwallis, on the suggestion of a question in law to the judges, Lord Danby demanded of the lord high steward, the Earl of Nottingham, "Whether it would be proper here (in open court) to ask the question of your grace, or to propose it to the judges?"†

The lord high steward answered, "If your lordships doubt of any thing whereon a question in law ariseth, the latter opinion, and the *better* for the prisoner is, *that it must be stated in the presence of the prisoner, that he may know whether the question be truly put.*" It hath *sometimes* been practised otherwise; and the peers have sent for the judges, and have asked their opinion in private, and have come back and have given their verdict according to that opinion, and there is scarcely a precedent of its being otherwise done. There is a later authority in print that doth settle the point so as I tell you, and I do conceive *it ought to be followed;* and it being safer for the prisoner, my humble opinion to your lordship is, that he ought to be present at *the stating of the question.* Call the *prisoner.*" The prisoner, who had withdrawn, again appearing, he said,

"My Lord Cornwallis, and my Lords the Peers, since *they* have withdrawn, have conceived a doubt in some matter *of fact* in your case; and they have that tender regard of a prisoner at the bar, *that they will not suffer a case to be put up in his absence,* lest it should chance to prejudice him by being *wrong stated.*" Accordingly the ques-

* Coke, Inst. 4. p. 3. † State Trials, Vol. ii. p. 725. A. D. 1678.

tion was both put, and the judges' answer given publicly and in his presence.

Very soon after the trial of Lord Cornwallis, the impeachment against Lord Stafford was brought to a hearing, that is, in the 32d of Charles the Second. In that case the lord at the bar having stated a point of law, "touching the necessity of two witnesses to an overt act in case of treason: the lord high steward told Lord Stafford, that "all the judges that assist them, *and are here in your lordship's presence and hearing*, should deliver their opinions, whether it be doubtful and disputable or not." Accordingly the judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open court*. Another abstract point of law was also proposed from the bar on the same trial, concerning the legal sentence in high treason; and in the same manner the judges on reference delivered their opinion *in open court*; and no objection was taken to it, as any thing new or irregular.*

In the 1st of James the Second, came on a remarkable trial of a peer; the trial of Lord Delamere. On that occasion a question of law was stated. There also, in conformity to the precedents and principles given on the trial of Lord Cornwallis, and the precedent in the impeachment of Lord Stafford, the then lord high steward took care that the opinion of the judges should be given in open court.

Precedents grounded on principles so favourable to the fairness and equity of judicial proceedings, given in the reigns of Charles the Second and James the Second, were not likely to be abandoned after the Revolution. The first trial of a peer which we find after the Revolution, was that of the Earl of Warwick.

In the case of the Earl of Warwick, 11 Will. III.† a question in law upon evidence was put to the judges; the statement of the question was made in open court by the

* State Trials, Vol. iii. 212.

† State Trials, Vol. v. p. 169.

lord high steward, Lord Somers: "If there be six in company, and one of them is killed, the other five are afterwards indicted, and three are tried and found guilty of manslaughter, and upon their prayers have their clergy allowed, and the burning in the hand is respited, but not pardoned, whether any of the three can be a witness on the trial of the other two." Lord Halifax — "I suppose your lordships will have the opinion of the judges upon this point; and *that must be in the presence of the prisoner.*" Lord high steward (Lord Somers), "*It must certainly be in the presence of the prisoner*, if you ask the judges' opinions."

In the same year, Lord Mohun was brought to trial upon an indictment for murder. In this single trial a greater number of questions was put to the judges in matter of law, than probably was ever referred to the judges in all the collective body of trials before or since that period. That trial, therefore, furnishes the largest body of authentic precedents in this point to be found in the records of parliament. The number of questions put to the judges in this trial was twenty-three *. They all originated from the peers themselves; yet the court called upon the party's counsel, as often as questions were proposed to be referred to the judges, as well as on the counsel for the crown, to argue every one of them *before* they went to those learned persons. Many of the questions accordingly were argued at the bar at great length. The opinions were given and argued *in open court.* Peers frequently insisted that the judges should give their opinions *seriatim*, which they did always publicly in the court, with great gravity and dignity, and greatly to the illustration of the law, as they held and acted upon it in their own courts.

In Sacheverell's case (just cited for another purpose) the Earl of Nottingham demanded whether he might not propose a question of law to the judges *in open court.* It was

* State Trials, Vol. iv. from p. 538. to 551.

agreed to; and the judges gave their answer *in open court*, though this was after verdict given: and in consequence of the advantage afforded to the prisoner in hearing *the opinion* of the judges, he was thereupon enabled to move in arrest of judgment.

The next precedent which your committee finds of a question put by the Lords, sitting as a court of judicature, to the judges pending the trial, was in the 20th of George the Second; when Lord Balmerino*, who was tried on an indictment for high treason, having raised a doubt, whether the evidence proved him to be at the place assigned for the overt act of treason on the day laid in the indictment. The point was argued at the bar by the counsel for the crown in the prisoner's presence, and for his satisfaction. The prisoner, on hearing the argument, waived his objection, but the then lord president moving their lordships to adjourn to the chamber of parliament, the lords adjourned accordingly; and after some time, returning into Westminster-hall, the lord high steward (Lord Hardwicke) said, "Your lordships were pleased, in the chamber of parliament, to come to a resolution, that the opinion of the learned and reverend judges should be taken on the following question, namely, Whether it is necessary that an overt act of high treason should be proved to have been committed on the particular day laid in the indictment? Is it your lordships pleasure that the judges do now give their opinion on that question?

"Lords — Aye, aye.

"Lord high steward — My lord chief justice!

"Lord chief justice, †

"The question proposed by your lordships is, Whether it be necessary that an overt act of high treason should be proved to be committed on the particular day laid in the indictment?

"We are all of opinion, that it is not necessary to

* Lords' Journals, Vol. ix. p. 606. Die Lunæ 28 July 1746.

† Lord Chief Justice Lee.

prove the overt act to be committed on the particular day laid in the indictment; but as evidence may be given of an overt act before the day, so it may be after the day specified in the indictment; for the day laid is circumstance and form only, and not material in point of proof, this is the known constant course of proceeding in trials."

Here the case was made for the judges, for the satisfaction of one of the peers, after the prisoner had waived his objection. Yet it was thought proper, as a matter of course and of right, that the judges should state the question put to them in the open court, and in presence of the prisoner; and that, in the same open manner, and in the same presence, their answer should be delivered.

Your committee concludes their precedents begun under Lord Nottingham and ended under Lord Hardwicke. They are of opinion, that a body of precedents so uniform, so accordant with principle, made in such times, and under the authority of a succession of such great men, ought not to have been departed from. The single precedent to the contrary, to which your committee has alluded above, was on the trial of the Dutchess of Kingston *, in the reign of his present majesty. But in that instance the reasons of the judges were, by order of the House, delivered in writing, and entered at length on the journals; so that the legal principle of the decision is equally to be found, which is not the case in any one instance of the present impeachment.

The Earl of Nottingham, in Lord Cornwallis's case, conceived, though it was proper and agreeable to justice, that this mode of putting questions to the judges, and receiving their answer in public, was not supported by former precedents: but, he thought, a book of authority had declared in favour of this course.

Your committee is very sensible, that antecedent to the great period to which they refer, there are instances of

* State Trials, Vol. ii. p. 262.

questions having been put to the judges privately. But we find the *principle* of publicity (whatever variations from it there might be in practice) to have been so clearly established at a more early period, that all the judges of England resolved, in Lord Morley's trial, in the year 1666, (about twelve years before the observation of Lord Nottingham,) *on a supposition that the trial should be actually concluded, and the lords retired to the chamber of parliament to consult on their verdict*, that even in that case (much stronger than the observation of your committee requires for its support), if their opinions should then be demanded by the peers, for the information of their private conscience, yet they determined that they should be given in public. This resolution is in itself so solemn, and is so bottomed on constitutional principle and legal policy, that your committee have thought fit to insert it *verbatim* in their report, as they relied upon it at the bar of the court, when they contended for the same publicity.

"It was resolved, that in case the peers who are triers, *after the evidence given, and the prisoner withdrawn, and they gone to consult of the verdict*, should desire to speak with any of the judges, to have their opinion upon any point of law, that if the lord steward spoke to us to go, we should go to them. But when the lords asked us any question, we should not deliver any private opinion, but let them know *we were not to deliver any private opinion without conference with the rest of the judges, and that to be done openly in court; and this (notwithstanding the precedent in the case of the Earl of Castlehaven) was thought prudent in regard of ourselves, as well as for the avoiding suspicion which might grow by private opinions, ALL resolutions of judges being ALWAYS done in public.*"*

The judges in this resolution over-ruled the authority of the precedent, which militated against the whole spirit of

* Kelynge's Reports, p. 54.

their place and profession. Their declaration was without reserve or exception, that "*all* resolutions of the judges are *always* done in public."—These judges (as should be remembered to their lasting honour) did not think it derogatory from their dignity, nor from their duty to the House of Lords, to take such measures concerning the publicity of their resolutions, as should secure them from suspicion. They knew that the mere circumstance of privacy in a judicature, where any publicity is in use, tends to beget suspicion and jealousy.—Your committee is of opinion, that the honourable policy of avoiding suspicion, by avoiding privacy, is not lessened by any thing which exists in the present time, and in the present trial.

Your committee has here to remark, that this learned judge seemed to think the case of Lord Audley (Castlehaven) to be more against him than in truth it was. The precedents were as follow: The opinions of the judges were taken three times. The first time by the attorney-general, at Serjeant's Inn, antecedent to the trial. The last time, after the peers had retired to consult on their verdict. The middle time, *was during the trial itself**; and here the opinion was taken in open court, agreeably to what your committee contends to have been the usage ever since this resolution of the judges. What was done before seemed to have passed *sub silentio*, and possibly through mere inadvertence.

Your committee observes, that the precedents by them relied on, were furnished from times in which the judicial proceedings in parliament, and in all our courts, had obtained a very regular form. They were furnished at a period in which, Justice Blackstone remarks, that more laws were passed, of importance to the rights and liberties of the subject, than in any other. These precedents lean all one way, and carry no marks of accommodation to the variable spirit of the times and of political occasions. They

* Rushworth, Vol. ii. p. 93, 94, 95. 100.

are the same before and after the Revolution. They are the same through five reigns. The great men who presided in the tribunals which furnished these examples were in opposite political interests, but all distinguished for their ability, integrity, and learning.

The Earl of Nottingham, who was the first on the bench to promulgate this publicity as a rule, has not left us to seek the principle in the case: that very learned man considers the publicity of the questions and answers as a matter of justice, *and of justice favourable to the prisoner.* In the case of Mr. Hastings, the prisoner's counsel did not join your committee in their endeavours to obtain the publicity we demanded. Their reasons we can only conjecture. But your managers, acting for this House, were not the less bound to see that the due parliamentary course should be pursued, even when it is most favourable to those whom they impeach. If it should answer the purposes of one prisoner to waive the rights which belong to all prisoners, it was the duty of your managers to protect those general rights against that particular prisoner. It was still more their duty to endeavour, that their *own* questions should not be erroneously stated, or cases put which varied from those which they argued, or opinions given in a manner not supported by the spirit of our laws and institutions, or by analogy with the practice of all our courts.

Your committee, much in the dark about a matter in which it was so necessary that they should receive every light, have heard, that in debating this matter abroad, it has been objected, that many of the precedents on which we most relied were furnished in the courts of the lord high steward, and not in trials where the peers were judges; and that the lord high steward not having it in his power to retire with the juror peers, the judges' opinions, from necessity, not from equity to the parties, were given before that magistrate.

Your committee thinks it scarcely possible that the lords could be influenced by such a feeble argument. For, admitting the fact to have been as supposed, there is no sort

of reason why so uniform a course of precedents, in a legal court, composed of a peer for judge, and peers for triers —a course so favourable to all parties and to equal justice —a course in concurrence with the procedure of all our other courts, should not have the greatest authority over their practice in every trial before the *whole body* of the peerage.

The Earl of Nottingham, who acted as high steward in one of these commissions, certainly knew what he was saying. He gave no such reason. His argument for the publicity of the judges' opinions did not turn at all on the nature of his court, or of his office in that court. It rested on the equity of the principle, and on the fair dealing due to the prisoner.

Lord Somers was in no such court; yet his declaration is full as strong. He does not indeed argue the point, as the Earl of Nottingham did when he considered it as a new case. Lord Somers considers it as a point quite settled, and no longer standing in need of being supported by reason or precedent.

But it is a mistake that the precedents stated in this report are wholly drawn from proceedings in that kind of court. Only two are cited, which are furnished from a court constituted in the manner supposed. The rest were in trials by all the peers, and not by a jury of peers with an high steward.

After long discussions with the peers on this subject, "The lords committees in a conference told them [the committee of this House, appointed to a conference on the matter,] that the high steward is but speaker *pro tempore*, and giveth his vote as well as the other lords: this changeth not the nature of the court. And the lords declared, that they have power enough to proceed to trial, though the king should not name an high steward *." On the same day, "It is declared and ordered, by the lords

* Foster's Crown Laws, p. 145.

spiritual and temporal in parliament assembled, that the office of high steward on trials of peers upon impeachments is not necessary to the House of peers — but that the lords may proceed in such trials, if an high steward is not appointed, according to their humble desire."

To put the matter out of all doubt, and to remove all jealousy on the part of the Commons, the commission of the lord high steward was then altered.

These rights, contended for by the Commons in their impeachments, and admitted by the peers, were asserted in the proceedings preparatory to the trial of Lord Stafford, in which that long chain of uniform precedents, with regard, to the publicity of the judges' opinions in trials, begins.

For these last citations, and some of the remarks, your committee are indebted to the learned and upright justice Foster. They have compared them with the journals, and find them correct. The same excellent author proceeds to demonstrate that whatever he says of trials by impeachment is equally applicable to trials before the high steward on indictment; and consequently, that there is no ground for a distinction, with regard to the public declaration of the judges' opinions, founded on the inapplicability of either of these cases to the other. The argument on this whole matter is so satisfactory, that your committee has annexed it at large to their report *. As there is no difference, in fact, between these trials (especially since the act which provides that all the peers shall be summoned to the trial of a peer) so there is no difference in the reason and principle of the publicity, let the matter of the steward's jurisdiction be as it may.

Publicity General.

Your committee do not find any positive law which binds the judges of the courts in Westminster-hall publicly to

* See the Appendix, No. 1.

give a reasoned opinion from the bench, in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform, that it must be considered as the law of the land. It has prevailed, so far as we can discover, not only in all the courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the court of wards and the star-chamber. An author quoted by Rushworth, speaking of the constitution of that chamber, "And so it was resolved, *by the judges, on reference made to them; and their opinion, after deliberate hearing, and view of former precedents, was published in open court* *." It appears elsewhere in the same compiler, that all their proceedings were public, even in deliberating previous to judgment.

The judges in their reasonings have always been used to observe on the arguments employed by the counsel on either side; and on the authorities cited by them, assigning the grounds for rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of law, according to the occasion. This publicity, not only of decision but of deliberation, is not confined to their several courts, whether of law or equity, whether above, or at Nisi Prius, but it prevails where they are assembled in the Exchequer Chamber, or at Serjeant's Inn, or wherever matters come before the judges collectively for consultation and revision. — It seems to your committee to be moulded in the essential frame and constitution of British judicature.

Your committee conceives, that the English jurisprudence has not any other sure foundation, nor consequently the lives and properties of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and from time to time published (mostly under the sanction of the judges), called reports.

* Rushworth, Vol. ii. p. 475. & passim.

In the early periods of the law it appears to your committee, that a course still better had been pursued, but grounded on the same principles; and that no other cause than the multiplicity of business prevented its continuance. "Of ancient time (says Lord Coke) in cases of difficulties, either criminal or civil, *the reasons and causes* of the judgment were set down *upon the record*, and so continued in the reigns of Ed. I. and Ed. II., and then there was no need of reports; but in the reign of Ed. III. (when the law was in its height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the record, but then the *great casuists and reporters of cases*, (certain grave and sad men) published the cases, *and the reasons and causes of the judgments or resolutions*, which, from the beginning of the reign of Ed. III. and since, we have in print. But these also, though of great credit and excellent use in their kind, *yet far underneath the authority of the parliament rolls, reporting the acts, judgments, and resolutions of that highest court.*" *

Reports, though of a kind less authentic than the Year Books to which Coke alludes, have continued without interruption to the time in which we live. It is well known, that the elementary treatises of law, and the dogmatical treatises of English jurisprudence, whether they appear under the names of institutes, digests, or commentaries, do not rest on the authority of the supreme power, like the books called the Institute, Digest, Code, and authentic Collations in the Roman Law. With us, doctrinal books of that description have little or no authority, other than as they are supported by the adjudged cases and reasons given at one time or other from the bench; and to these they constantly refer. This appears in Coke's Institutes, in Comyns's Digest, and in all books of that nature. To give judgment privately is to put an end to reports; and to put an end to reports, is to put an end to the law of Eng-

* Coke, 4 Inst. p. 5.

land. It was fortunate for the constitution of this kingdom, that in the judicial proceedings in the case of ship-money, the judges did not then venture to depart from the ancient course. They gave and they argued their judgment in open court *. Their reasons were publicly given; and the reasons assigned for their judgment took away all its authority.

The great historian Lord Clarendon, at that period a young lawyer, has told us, that the judges gave as law from the bench what every man in the hall knew not to be law.

This publicity, and this mode of attending the decision with its grounds, is not observed only in the tribunals where the judges preside in a judicial capacity individually or collectively, but where they are consulted by the peers, on the law in all *writs of error* brought from below. In the opinion they give of the matter assigned as error, one at least of the judges argues the questions at large. He argues them publicly, though in the chamber of parliament; and in such a manner that every professor, practitioner, or student of the law, as well as the parties to the suit, may learn the opinions of all the judges of all the courts upon those points, in which the judges in one court might be mistaken.

Your committee is of opinion that nothing better could be devised by human wisdom than argued judgments publicly delivered for preserving unbroken the great traditionary body of the law, and for marking, whilst that great body remained unaltered, every variation in the application and the construction of particular parts; for pointing out the ground of each variation; and for enabling the learned of the bar and all intelligent laymen to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable

* This is confined to the judicial opinions in Hambden's case. It does not take in all the extra-judicial opinions.

nature of human affairs, a progressive experience, and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions, which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives, of a nature not more justifiable.

Your committee, finding this course of proceeding to be concordant with the character and spirit of our judicial proceeding, continued from time immemorial, supported by arguments of sound theory, and confirmed by effects highly beneficial, could not see without uneasiness, in this great trial for Indian offences, a marked innovation. Against their reiterated requests, remonstrances, and protestations, the opinions of the judges were always taken secretly.

Not only the constitutional publicity for which we contend was refused to the request and entreaty of your committee; but when a noble peer, on the 24th day of June 1789, did in open court declare, that he would then propose some questions to the judges in that place, and hoped to receive their answer openly, according to the approved good customs of that and of other courts, the lords instantly put a stop to the further proceeding by an immediate adjournment to the chamber of parliament.

Upon this adjournment we find by the Lords' Journals, that the House, on being resumed, ordered, that "it should resolve itself into a committee of the whole House on Monday next, to take into consideration what is the proper manner of putting questions by the lords to the judges, and of their answering the same in judicial proceedings."

The House did thereon resolve itself into a committee, from which the Earl of Galloway, on the 29th of the same month, reported as follows: "That the House has, in the trial of Warren Hastings, Esquire, proceeded in a regular course in the manner of propounding their questions to the judges in the chamber of parliament, and in receiving their answers to them in the same place."

The resolution was agreed to by the lords; but the

protest (as below) * was entered thereupon, and supported by strong arguments.

Your committee remark, that this resolution states only, that the House had proceeded in this secret manner of propounding questions to the judges, and of receiving their answers during the trial, and on matters of debate between the parties, "in a regular course." It does not assert that another course would not have been *as* regular. It does not state either judicial convenience, principle, or

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* *Dissentient.*

1st. Because, by consulting the judges out of court in the absence of the parties, and with shut doors, we have deviated from the most approved, and almost uninterrupted, practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this high court of parliament should be open and exposed, like all other courts of justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

2dly. Because, from private opinions of the judges, upon private statements, which the parties have neither heard nor seen, grounds of a decision will be obtained, which must inevitably affect the cause at issue at our bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the judges to our private statement; and through the medium of our subsequent decision we transfer the effect of those opinions to the parties, who have been deprived of the right and advantage of being heard by such private, though unintended, transmutation of the point at issue.

3dly. Because the prisoners who may hereafter have the misfortune to stand at our bar will be deprived of that consolation which the Lord High Steward Nottingham conveyed to the prisoner, Lord Cornwallis, viz. "That the lords have that tender regard of a prisoner at the bar, that they will not suffer a case to be put in his absence, lest it should prejudice him by being wrong stated."

4thly. Because unusual mystery and secrecy in our judicial proceedings must tend either to discredit the acquittal of the prisoner, or render the justice of his condemnation doubtful.

Porchester.
Suffolk and *Berkshire.*
Loughborough.

body of precedents for that *regular course*. No such body of precedents appear on the journal that we could discover. Seven-and-twenty at least, in a regular series, are directly contrary to this regular course. Since the æra of the 29th of June 1789, no one question has been admitted to go publicly to the judges.

This determined and systematic privacy was the more alarming to your committee, because the questions did not (except in that case) originate from the lords for the direction of their own conscience. These questions, in some material instances, were not made or allowed by the parties at the bar, nor settled in open court, but differed materially from what your managers contended was the true state of the question, as put and argued by them. They were such as the lords thought proper to state for them. Strong remonstrances produced some alteration in this particular; but even after these remonstrances, several questions were made, on statements which the managers never made nor admitted.

Your committee does not know of any precedent before this, in which the Peers, on a proposal of the Commons, or of a less weighty person before their court, to have the cases publicly referred to the judges, and their arguments and resolutions delivered in their presence, absolutely refused. The very few precedents of such private reference on trials, have been made, as we have observed already, *sub silentio*, and without any observation from the parties.

In the precedents we produce, the determination is accompanied with its reasons, and the publicity is considered as the clear undoubted right of the parties.

Your committee, using their best diligence, have never been able to form a clear opinion upon the ground and principle of these decisions. The mere result upon each case decided by the lords furnished them with no light from any principle, precedent, or foregone authority of law or reason, to guide them with regard to the next matter of evidence which they had to offer, or to discriminate what matter ought to be urged, or to be set aside;

your committee not being able to divine, whether the particular evidence, which, upon a conjectural principle, they might choose to abandon, would not appear to this House, and to the judging world at large, to be admissible, and possibly decisive proof. In these straights they had and have no choice, but either wholly to abandon the prosecution, and of consequence to betray the trust reposed in them by this House, or to bring forward such matter of evidence as they are furnished with from sure sources of authenticity, and which in their judgment, aided by the best advice they could obtain, is possessed of a moral aptitude juridically to prove or to illustrate the case which the House had given them in charge.

Mode of putting the Questions.

When your committee came to examine into those private opinions of the judges, they found, to their no small concern, that the mode both of putting the questions to the judges, and their answers, was still more unusual and unprecedented than the privacy with which those questions were given and resolved.

This mode strikes, as we apprehend, at the vital privileges of the House. For, with the single exception of the first question put to the judges in 1788, the case being stated, the questions are raised directly, specifically, and by name, on those privileges; that is, *what evidence is it competent for the managers of the House of Commons to produce?*

We conceive, that it was not proper, *nor justified by a single precedent*, to refer to the judges of the inferior courts any question, and still less for them to decide in their answer, of what is or is not competent for the House of Commons, or for any committee acting under their authority, to do, or not to do, in any instance or respect whatsoever. This new and unheard of course can have no other effect than to subject to the discretion of the judges the law of parliament and the privileges of the House of Commons,

and in a great measure the judicial privileges of the peers themselves; any intermeddling in which on their part, we conceive to be a dangerous and unwarrantable assumption of power. It is contrary to what has been declared by Lord Coke himself, in a passage before quoted, to be the duty of the judges; and to what the judges of former times have confessed to be their duty; on occasions to which he refers, in the time of Henry the Sixth. And we are of opinion that the conduct of those sages of the law, and others their successors, who have been thus diffident and cautious in giving their opinions upon matters concerning parliament, and particularly on the privileges of the House of Commons, was laudable in the example, and ought to be followed; particularly the principles upon which the judges declined to give their opinions in the year 1614. It appears by the Journals of the Lords, that a question concerning the law relative to impositions having been put to the judges, the proceeding was as follows:

"Whether the lords, the judges, shall be heard deliver their opinion touching the point of impositions before further consideration be had of answer to be returned to the Lower House, concerning the message from them lately received."

"Whereupon the number of the lords, requiring to hear the judges' opinions by saying "Content," exceeding the others which said "Non Content," the lords, the judges so desiring were permitted to withdraw themselves into the lord chancellor's private rooms; where having remained awhile, and advised together, they returned into the House, and having taken their places, and standing discovered, did by the mouth of the lord chief justice of the King's Bench, humbly desire to be forborne at this time, in this place, to deliver any opinion in this case, for many weighty and important reasons, which his lordship delivered with great gravity and eloquence; concluding, that himself and his brethren are upon particulars in judicical course to speak and judge between the king's majesty and his people, and likewise be-

tween his highness's subjects, and in no case to be disputants on any side."

Your committee do not find any thing which, through inadvertence or design, had a tendency to subject the law and course of parliament to the opinions of the judges of the inferior courts, from that period until the 1st of James II. The trial of Lord Delamere for high treason was had by special commission before the lord high steward: it was before the act which directs that *all* peers should be summoned to such trials. This was not a trial in full parliament, in which case it was then contended for, that the lord high steward was the judge of the law, presiding in the court, but had no vote in the verdict; and that the lords were triers only, and had no vote in the judgment of law. This was looked on as the course, where the trial was not in full parliament, in which latter case, there was no doubt but that the lord high steward made a part of the body of the triers, and that the whole House was the judge. *

In this cause, after the evidence for the crown had been closed, the prisoner prayed the court to adjourn. The lord high steward doubted his power to take that step in that stage of the trial; and the question was, "Whether, the trial not being in full parliament, when the prisoner is upon his trial, and evidence for the king is given, the lords being (as it may be termed) charged with the prisoner, the peers may separate for a time, which is the consequence of an adjournment?"

The lord high steward doubted of his power to adjourn the court. The case was evidently new, and his grace proposed to have the opinion of the judges upon it. The judges, in consequence, offering to withdraw into the exchequer chamber, Lord Falconberg "insisted that the question concerning the privilege of the peerage only, and conceived that the *judges are not concerned to make any determination in that matter; and being such a point of*

* See the lord high steward's speech on that head, 1st Ja. II.

privilege, certainly the inferior courts have no right to determine it." It was insisted, therefore, that the lords triers should retire with the judges. The lord high steward thought differently, and opposed this motion; but, finding the other opinion generally prevalent, he gave way, and the lords triers retired, taking the judges to their consult.

When the judges returned, they delivered their opinion in *open court.*

Lord Chief Justice Herbert spoke for himself, and the rest of the judges. After observing on the novelty of the case, with a temperate and becoming reserve with regard to the rights of parliaments, he marked out the limits of the offices of the inferior judges on such occasions, and declared, "*All that we, the judges, can do, is to acquaint your grace and the noble lords what the law is in the inferiour courts in cases of the like nature,* and the reason of the law in those points, and *then leave the jurisdiction of the court to its proper judgment.*" The chief justice concluded his statement of the usage below, and his observations on the difference of the cases of a peer tried in full parliament, and by a special commission, in this manner:

"Upon the whole matter, my lords, whether the peers, being judges in the one and not in the other instance, alters the case, or whether the reason of the law in inferior courts, why the jury are not permitted to separate until they have discharged themselves of their verdict, may have any influence on this case, *where that reason seems to fail,* the prisoner being to be tried by men of unquestionable honour, *we cannot presume so far as to make any determination, in a case which is both new to us, and of great consequence in itself;* but think it the proper way for *us,* having laid matters as we conceive them before your grace and my lords, *to submit the jurisdiction of your own court to your own determination.*"

It appears to your committee, that the lords, who stood against submitting the course of their high court to the inferior judges, and that the judges, who, with a legal and

constitutional discretion, declined giving any opinion in this matter, acted as became them; and your committee sees no reason why the peers, at this day, should be less attentive to the rights of their court, with regard to an exclusive judgment on their own proceedings, or to the rights of the Commons acting as accusers for the whole Commons of Great Britain in that court, or why the judges should be less reserved in deciding upon any of these points of high parliamentary privilege, than the judges of that and the preceding periods. This present case is a proceeding in full parliament, and not like the case under the commission in the time of James II., and still more evidently out of the province of judges in the inferior courts.

All the precedents previous to the trial of Warren Hastings, Esq. seem to your committee to be uniform. The judges had constantly refused to give an opinion on any of the powers, privileges, or competencies of either House. But in the present instance your committee has found, with great concern, a further matter of innovation.

Hitherto the constant practice has been to put questions to the judges but in the three following ways; as,

1st, A question of pure abstract law, without reference to any case, or merely upon an A. B. case stated to them.

2dly, To the legal construction of some act of parliament.

3dly, To report the course of proceeding in the courts below, upon an abstract case.

Besides these three, your committee knows not of a single example of any sort, during the course of any judicial proceeding at the bar of the House of Lords, whether the prosecution has been by indictment, by information from the attorney-general, or by impeachment of the House of Commons.

In the present trial, the judges appear to your committee not to have given their judgment on points of law, stated as such, but to have in effect tried the cause, in the whole course of it, with one instance to the contrary.

The lords have stated no question of general law; no

question on the construction of an act of parliament; no question concerning the practice of the courts below. They put *the whole gross case, and matter in question, with all its circumstances, to the judges.* They have, *for the first time,* demanded of them what particular person, paper, or document ought, or ought not, to be produced before them by the managers for the Commons of Great Britain. — For instance, whether, under such an article, the Bengal consultations of such a day, the examination of Rajah Nundcomar, and the like.

The operation of this method is in substance not only to make the judges masters of the whole process and conduct of the trial, but through that medium to transfer to them the ultimate judgment on the cause itself, and its merits.

The judges attendant on the court of peers hitherto have not been supposed to know the particulars and minute circumstances of the cause, and must therefore be incompetent to determine upon those circumstances. The evidence taken is not, of course, that we can find, delivered to them — nor do we find, that in fact any order has been made for that purpose, even supposing that the evidence could at all regularly be put before them. They are present in court, not to hear the trial, but solely to advise in matter of law — they cannot take upon themselves to say any thing about the Bengal consultations, or to know any thing of Rajah Nundcomar, of Kelleram, or of Mr. Francis, or Sir John Clavering.

That the House may be the more fully enabled to judge of the nature and tendency of thus putting the question *specifically, and on the gross case,* your committee thinks fit here to insert one of those questions, reserving a discussion of its particular merits to another place. It was stated on the 22d of April 1790, "On that day the managers proposed to shew that Kelleram fell into great balances with the East India Company, in consequence of his appointment." — It is so stated in the printed minutes. (P. 1206.) But the real tendency and gist of the proposition is not

shewn. However the question was put, "Whether it be or be not competent *to the managers for the Commons to give evidence upon the charge in the 6th article, to prove* that the rent which the defendant Warren Hastings, Esq. let the lands mentioned in the said 6th article of charge to Kelleram, fell into arrear and was deficient; and whether, if proof were offered that the rent fell into arrear immediately after the letting, the evidence in that case would be competent?

"The judges answered on the 27th of the said month, as follows: *It is not competent for the managers for the House of Commons* to give evidence upon the charge in the 6th article, to prove that the rent at which the defendant, Warren Hastings, let the lands in the said 6th article of charge to Kelleram, fell into arrear and was deficient."

The House will observe, that on the question two cases of competence were put — The first on the competence of managers for the House of Commons to give the evidence supposed to be offered by them, but which we deny to have been offered in the manner and for the purpose assumed in this question: the second is in a shape apparently more abstracted, and more nearly approaching to parliamentary regularity — on the competence of the evidence itself, in the case of a supposed circumstance being superadded. The judges answered only the first, denying flatly the competence of the managers. As to the second, the competence of the supposed evidence, they are profoundly silent. Having given this blow to our competence, about the other question (which was more within their province), namely the competence of evidence on a case hypothetically stated, they give themselves no trouble. The lords on that occasion rejected the whole evidence. On the face of the judges' opinion, it is a determination, *on a case*, the trial of which was not with them, but it contains *no rule or principle of law*, to which alone it was their duty to speak. *

* All the resolutions of the judges, to the time of the reference to the committee, are in the Appendix, No. 2.

These essential innovations tend, as your committee conceives, to make an entire alteration in the constitution, and in the purposes of the high court of parliament, and even to reverse the ancient relations between the lords and the judges.

It tends wholly to take away from the Commons the benefit of making good their case before the proper judges, and submits this high inquest to the inferior courts.

Your committee sees no reason why, on the same principles and precedents the Lords may not terminate their proceedings in this, and in all future trials, by sending the whole body of evidence taken before them in the shape of a special verdict, to the judges, and may not demand of them, whether they ought, on the whole matter, to acquit or condemn the prisoner; nor can we discover any cause that should hinder them from deciding on the accumulative body of the evidence, as hitherto they have done in its parts, and from dictating the existence or non-existence of a misdemeanor or other crime in the prisoner, as they think fit; — without any more reference to principle, or precedent of law, than hitherto they have thought proper to apply in determining on the several parcels of this cause.

Your committee apprehends, that very serious inconveniencies and mischiefs may hereafter arise from a practice in the House of Lords, of considering itself as unable to act without the judges of the inferior courts, of implicitly following their dictates, of adhering with a literal precision to the very words of their responses, and putting them to decide on the competence of the managers for the Commons — the competence of the evidence to be produced — who are to be permitted to appear — what questions are to be asked of witnesses — and, indeed, parcel by parcel, on the whole of the gross case before them; as well as to determine upon the order, method, and process of every part of their proceedings. The judges of the inferior courts are by law rendered independent of the crown. But this, instead of a benefit to the subject, would be a

grievance, if no way was left of producing a responsibility. If the lords cannot or will not act without the judges, and if (which God forbid!) the Commons should find it at any time hereafter necessary to impeach them before the Lords; this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of law, or admitting any proof of fact without them; and having once assumed the rule of proceeding and practice below as their rule, they must at every instant resort, for their means of judging, to the authority of those whom they are appointed to judge.

Your committee must always act with regard to men as they are. There are no privileges or exemptions from the infirmities of our common nature. We are sensible, that all men, and without any evil intentions, will naturally wish to extend their own jurisdiction, and to weaken all the power by which they may be limited and controlled. It is the business of the House of Commons to counteract this tendency. This House had given to its managers no power to abandon its privileges, and the rights of its constituents. They were themselves as little disposed, as authorized, to make this surrender. They are members of this House, not only charged with the management of this impeachment, but partaking of a general trust, inseparable from the Commons of Great Britain in parliament assembled, one of whose principal functions and duties it is, to be observant of the courts of justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses unknown to the laws and constitution of this kingdom, or to equity, sound legal policy, or substantial justice.

Your committee were not sent into Westminster-hall for the purpose of contributing in their persons, and under the authority of the House, to change the course or law of parliament, which had continued unquestioned for at least four hundred years. Neither was it any part of their mission to suffer precedents to be established, with relation to the law and rule of evidence, which tended in their

opinion to shut up for ever all the avenues to justice. They were not to consider a rule of evidence as a means of concealment. They were not, without a struggle, to suffer any subtleties to prevail, which would render a process in parliament, not the terror, but the protection of all the fraud and violence arising from the abuse of British power in the East. Accordingly, your managers contended with all their might, as their predecessors in the same place had contended with more ability and learning, but not with more zeal and more firmness, against those dangerous innovations as they were successively introduced: they held themselves bound constantly to protest, and in one or two instances they did protest, in discourses of considerable length, against those private, and for what they could find, unargued judicial opinions, which must, as they fear, introduce by degrees the miserable servitude which exists where the law is uncertain or unknown.

Debates on Evidence.

The chief debates at the bar, and the decisions of the judges (which we find in all cases implicitly adopted, in all their extent, and without qualification, by the lords) turned upon *evidence*. Your committee, before the trial began, were apprized, by discourses which prudence did not permit them to neglect, that endeavours would be used to embarrass them in their proceedings by exceptions against evidence; that the judgments and opinions of the courts below would be resorted to on this subject; that there the rules of evidence were precise, rigorous, and inflexible; and that the counsel for the criminal would endeavour to introduce the same rules, with the same severity and exactness, into this trial.

Your committee were fully assured, and were resolved strenuously to contend, that no doctrine or rule of law, much less the practice of any court, ought to have weight or authority in parliament, further than as such doctrine, rule, or practice, is agreeable to the proceedings in par-

liament, or hath received the sanction of approved precedent there; or is founded on the immutable principles of substantial justice, without which, your committee readily agrees, no practice, in any court, high or low, is proper or fit to be maintained.

In this preference of the rules observed in the high court of parliament, pre-eminently superior to all the rest, there is no claim made, which the inferior courts do not make, each with regard to itself. It is well known, that the rules of proceedings in these courts vary, and some of them very essentially; yet the usage of each court is the law of the court, and it would be vain to object to any rule in any court, that is not the rule of another court. For instance, as a general rule, the Court of King's Bench, on trials by jury, cannot receive depositions, but must judge by testimony *vivâ voce*. The rule of the Court of Chancery is not only not the same, but it is the reverse, and Lord Hardwicke ruled accordingly: "The constant and established proceedings of this court," said this great magistrate, "are on written evidence, like the proceedings on the civil and canon law. This is the course of the court, and the course of the court is the law of the court." — Atkyns, Vol. i. p. 446.

Your managers were convinced that one of the principal reasons for which this cause was brought into parliament, was the danger that in inferior courts their rule would be formed naturally upon their ordinary experience, and the exigencies of the cases which in ordinary course came before them. This experience, and the exigencies of these cases, extend little further than the concerns of a people comparatively in a narrow vicinage — a people of the same or nearly the same language, religion, manners, laws, and habits — with them an intercourse of every kind was easy.

These rules of law in most cases, and the practice of the courts in all, could not be easily applicable to a people separated from Great Britain by a very great part of the globe; separated by manners, by principles of religion, and of inveterate habits as strong as nature itself, still more

than by the circumstance of local distance. Such confined and inapplicable rules would be convenient indeed to oppression, to extortion, bribery, and corruption, but ruinous to the people, whose protection is the true object of all tribunals, and of all their rules. Even English judges in India, who have been sufficiently tenacious of what they considered as the rules of English courts, were obliged, in many points, and particularly with regard to evidence, to relax very considerably, as the civil and politic government has been obliged to do in several other cases, on account of insuperable difficulties arising from a great diversity of manners, and from what may be considered as a diversity even in the very constitution of their minds: instances of which your committee will subjoin in a future appendix.

Another great cause, why your committee conceived this House had chosen to proceed, in the high court of parliament, was because the inferior courts were habituated, with very few exceptions, to try men for the abuse only of their individual and natural powers, which can extend but a little way. Before them, offences, whether of fraud or violence, or both, are, for much the greater part, charged upon persons of mean and obscure condition. Those unhappy persons are so far from being supported by men of rank and influence, that the whole weight and force of the community is directed against them. In this case, they are, in general, objects of protection as well as of punishment; and the course perhaps ought, as it is *commonly* said to be, not to suffer any thing to be applied to their conviction beyond what the strictest rules will permit *. But in the cause which your managers have in charge, the circumstances are the very reverse to what happens in the cases of mere personal delinquency, which come before the courts. These courts have not before them persons who act, and who justify their acts, by the nature of a despotical and arbitrary power. The abuses,

* Blackstone's Commentaries, Book iv. p. 258.

stated in our impeachment, are not those of mere individual, natural faculties, but the abuses of civil and political authority. The offence is that of one, who has carried with him, in the perpetration of his crimes, whether of violence or of fraud, the whole force of the state;—who, in the perpetration and concealment of offences, has had the advantage of all the means and powers given to government for the detection and punishment of guilt, and for the protection of the people. The people themselves, on whose behalf the Commons of Great Britain take up this remedial and protecting prosecution, are naturally timid. Their spirits are broken by the arbitrary power usurped over them, and claimed by the delinquent as his law. They are ready to flatter the power which they dread. They are apt to look for favour by covering those vices in the predecessor, which they fear the successor may be disposed to imitate. They have reason to consider complaints as means not of redress, but of aggravation to their sufferings; and when they shall ultimately hear that the nature of the British laws, and the rules of its tribunals, are such as by no care or study either they, or even the Commons of Great Britain, who take up their cause, can comprehend, but which in effect and operation leave them unprotected, and render those who oppress them secure in their spoils, they must think still worse of British justice than of the arbitrary power of the Company's servants, which hath been exercised to their destruction. They will be for ever, what, for the greater part, they have hitherto been, inclined to compromise with the corruption of the magistrates, as a screen against that violence, from which the laws afford them no redress.

For these reasons, your committee did, and do, strongly contend, that the court of parliament ought to be open with great facility to the production of all evidence, except that which the precedents of parliament teach them authoritatively to reject, or which hath no sort of natural aptitude directly or circumstantially to prove the case. They have been and are invariably of opinion, that the

lords ought to *enlarge, and not to contract, the rules of evidence, according to the nature and difficulties of the case,* for redress to the injured, for the punishment of oppression, for the detection of fraud, and, above all, to prevent what is the greatest dishonour to all laws, and to all tribunals — the failure of justice. To prevent the last of these evils all courts in this and all countries have constantly made all their maxims and principles concerning testimony to conform; although such courts have been bound undoubtedly by stricter rules, both of form and of prescript cases, than the sovereign jurisdiction exercised by the Lords on the impeachment of the Commons ever has been, or ever ought to be. Therefore your committee doth totally reject any rules by which the practice of any inferior court is affirmed as a directory guide to an higher, especially where the forms and the powers of the judicature are different, and the objects of judicial enquiry are not the same.

Your committee conceives that the trial of a cause is not in the arguments or disputations of the prosecutors and the counsel, but in the *evidence;* and that to refuse evidence is to refuse to hear the cause: nothing, therefore, but the most clear and weighty reasons, ought to preclude its production. Your committee conceives that, when evidence, on the face of it relevant, that is connected with the party and the charge, was denied to be competent, *the burthen lay upon those who opposed it,* to set forth the authorities, whether of positive statute, known recognized maxims and principles of law, passages in an accredited institute, code, digest, or systematic treatise of laws, or some adjudged cases, wherein the courts have rejected evidence of that nature. No such thing ever (except in one instance, to which we shall hereafter speak) was produced at the bar, nor (that we know of) produced by the lords in their debates, or by the judges in the opinions by them delivered. Therefore, for any thing which as yet appears to your committee to the contrary, these responses and decisions were, in many of the points, not the deter-

minations of any law whatsoever, but mere arbitrary decrees, to which we could not without solemn protestation submit.

Your committee, at an early period, and frequently since the commencement of this trial, have neglected no means of research, which might afford them information concerning these supposed strict and inflexible rules of proceeding, and of evidence, which appeared to them destructive of all the means and ends of justice.

And, first, they examined carefully the Rolls and Journals of the House of Lords, as also the printed trials of cases before that court.

Your committee finds but one instance, in the whole course of parliamentary impeachments, in which evidence offered by the Commons has been rejected on the plea of inadmissibility or incompetence. This was in the case of Lord Strafforde's trial *; when the copy of a warrant (the same not having any attestation to authenticate it as a true copy) was, on deliberation, not admitted; and your committee thinks, as the case stood, with reason.—But even in this one instance, the Lords seemed to shew a marked anxiety not to narrow too much the inadmissibility of evidence, for they confined their determination "to this individual case," as the lord steward reported their resolution, and, he adds, "they conceive this could be no impediment or failure in the proceeding, because the truth and verity of it would depend on the first general power given to execute it, which they who manage the evidence for the Commons say they could prove †."—Neither have objections to evidence offered by the prisoner been very frequently made, nor often allowed when made.—In the same case with Lord Strafforde ‡, two books produced by his lordship, without proof by whom they were written, were rejected (and on a clear principle) "as being private

* Lords' Journals, Vol. iv. p. 204. An. 1641.
† Rush. Trial of Lord Strafforde, p. 430.
‡ Lords' Journals, Vol. iv. p. 210.

books, and no records." On both these occasions, the questions were determined by the Lords alone, without any resort to the opinions of the judges. In the impeachments of Lord Stafford, Dr. Sacheverell, and Lord Wintoun, no objection to evidence appears in the Lords' Journals to have been pressed, and not above one taken, which was on the part of the managers.

Several objections were indeed taken to evidence in Lord Macclesfield's trial *. They were made on the part of the managers, except in two instances, where the objections were made by the witnesses themselves. They were all determined (those started by the managers in their favour) by the lords themselves, without any reference to the judges. In the discussion of one of them, a question was stated for the judges concerning the law in a similar case upon an information in the court below; but it was set aside by the previous question. †

On the impeachment of Lord Lovat, ‡ no more than one objection to evidence was taken by the managers, against which Lord Lovat's counsel were not permitted to argue. Three objections on the part of the prisoner were made to the evidence offered by the managers, but all without success. The instances of similar objections in parliamentary trials of peers on indictments, are too few and too unimportant to require being particularized; — one, that in the case of Lord Warwick, has been already stated.

The principles of these precedents do not in the least affect any case of evidence which your managers had to support. The paucity and inapplicability of instances of this kind, convince your committee that the lords have ever used some latitude and liberality in all the means of bringing information before them — nor is it easy to conceive, that, as the lords are, and of right ought to be,

* Lords' Journals, Vol. xxii. p. 536. to 546. An. 1725.

† Ib. p. 541.

‡ Lords' Journals, Vol. xxvii. p. 63. 65. An. 1746.

judges of law and fact, many cases should occur (except those where a personal *vivâ voce* witness is denied to be competent) in which a judge, possessing *an entire judicial capacity*, can determine by anticipation what is good evidence, and what not, before he has heard it. When he has heard it, of course he will judge what weight it is to have upon his mind, or whether it ought not entirely to be struck out of the proceedings.

Your committee, always protesting, as before, against the admission of any law, foreign or domestic, as of authority in parliament, further than as written reason, and the opinion of wise and informed men, has examined into the writers on the civil law, ancient and more recent, in order to discover what those rules of evidence, in any sort applicable to criminal cases, were, which were supposed to stand in the way of the trial of offences committed in India.

They find that the term evidence, *evidentia*, from whence our's is taken, has a sense different in the Roman law, from what it is understood to bear in the English jurisprudence. The term most nearly answering to it in the Roman, being *probatio*, proof; which, like the term *evidence*, is a generic term, including every thing by which a doubtful matter may be rendered more certain to the judge; or, as Gilbert expresses it *, 'every matter is evidence which amounts to the proof of the point in question.

On the general head of evidence or proof, your committee finds, that much has been written by persons learned in the Roman law, particularly in modern times; and that many attempts have been made to reduce to rules the principles of evidence or proof, a matter which by its very nature seems incapable of that simplicity, precision, and generality; which are necessary to supply the matter, or to give the form to a rule of law. Much learning has been employed on the doctrine of indications and *presumptions*,

* Gilbert's Law of Evidence, p. 23.

in their books; far more than is to be found in our law. — Very subtle disquisitions were made, on all matters of jurisprudence in the times of the classical civil law, by the followers of the stoick school *. In the modern school of the same law, the same course was taken by Bartolus, Baldus, and the civilians who followed them, before the complete revival of literature †. All the discussions to be found in those voluminous writings furnish undoubtedly an useful exercise to the mind, by methodizing the various forms in which one set of facts, or collection of facts, or the qualities or demeanour of persons, reciprocally influence each other; and, by this course of juridical discipline, they add to the readiness and sagacity of those who are called to plead or to judge. But as human affairs and human actions are not of a metaphysical nature, but the subject is concrete, complex, and moral, they cannot be subjected (without exceptions which reduce it almost to nothing) to any certain rule. Their rules with regard to competence were many and strict, and our lawyers have mentioned it to their reproach. "The civilians (it has been observed) *differ in nothing more than admitting evidence*; for they reject Histriones, &c. and whole tribes of people ‡." But this extreme rigour as to competency, rejected by our law, is not found to extend to the *genus* of evidence, but only to a particular species — personal witnesses. Indeed, after all their efforts to fix these things by positive and inflexible maxims, the best Roman lawyers in their best ages were obliged to confess, that every case of evidence rather formed its own rule, than that any rule could be adapted to every case, the best opinions however seem to have reduced the admissibility of witnesses to a few heads. — "For if," said Callistratus, in a passage preserved to us in the digest, "the testimony is free from suspicion, either on account of the quality of the *person*, namely, that he is in

* Gravina, 84, 85. † Id. 90. usque ad 100.

‡ Atkyns Rep. Omichund versus Barker, Vol. i. p. 37.

a reputable situation; or for *cause*," that is to say, that the testimony given is not for reward, nor favour, nor for enmity, such a witness is admissible. This first description goes to *competence*; between which and *credit*, Lord Hardwicke justly says the discrimination is very nice: the other part of the text shews their anxiety to reduce credibility itself to a fixed rule. It proceeds therefore, "His sacred majesty, Hadrian, issued a rescript to Vivius Varus, lieutenant of Cilicia, to this effect, That he who sits in judgment is the most capable of determining what credit is to be given to witnesses." The words of the letter of rescript are as follow: "You ought best to know what credit is to be given to witnesses,—who, and of what dignity, and of what estimation they are, whether they seem to deliver their evidence with simplicity and candour—whether they seem to bring a formed and premeditated discourse—or whether on the spot they give probable matter in answer to the questions that are put to them." And there remains a rescript of the same prince to Valerius Varus on the bringing out the credit of witnesses. This appears to go more to the *general* principles of evidence. It is in these words: "What evidence, and in what measure or degree, shall amount to proof in each case, can be defined in no manner whatsoever that is sufficiently certain. For though not always, yet frequently, the truth of the affair may appear without any matter of public record.—In some cases, the number of the witnesses, in others their dignity and authority, is to be weighed; in others concurring public fame tends to confirm the credit of the evidence in question. This alone I am able, and in a few words, to give you as my determination, that you ought not too readily to bind yourself to try the cause *upon any one description of evidence*; but you are to estimate by your own discretion what you ought to credit, or what appears to you not to be established by proof sufficient." *

The modern writers on the civil law have likewise much

* Digest. L. xxii. Tit. 5.

much matter on this subject, and have introduced a strictness, with regard to personal testimony, which our particular jurisprudence has not thought it at all proper to adopt. In others we have copied them more closely. They divide evidence into two parts, in which they do not differ from the ancients. 1st, What is evidence, or *proof by itself?* 2dly, What is *presumption*, "which is a probable conjecture from a reference to something which, coming from marks and tokens ascertained, shall be taken for truth, until some other shall be adduced? Again, they have laboured particularly to fix rules for presumptions, which they divide into, 1. Violent and necessary. — 2. Probable. — 3. and lastly, slight and rash. But, finding that this head of presumptive evidence (which makes so large a part with them and with us in the trial of all causes, and particularly criminal causes) extremely difficult to ascertain, either with regard to what shall be considered as exclusively creating any of these three degrees of presumption, or what facts, and how proved, — and what marks and tokens may serve to establish them, — even those civilians, whose character it is to be subtle to a fault, have been obliged to abandon the task — and have fairly confessed, that the labours of writers to fix rules for these matters have been vain and fruitless *. One of the most able of them has said, "That the doctors of the law have written nothing of value concerning presumptions, — nor is the subject-matter such as to be reduced within the prescribed limit of any certain rules. In truth, it is from *the actual existing case*, and from the circumstances of the *persons*, and of the *business*, that we ought (under the guidance of an incorrupt judgment of the mind, which is called an equitable discretion) to determine what presumptions or conjectural proofs are to be admitted as rational, or rejected as false, or on which the understanding can pronounce nothing either the one way or the other." †

It is certain, that whatever over-strictness is to be found

* Calvinus Voce "Præsumptio." † Bartolus.

in the older writers on this law, with regard to evidence, it chiefly related to the mere competency of witnesses; yet even here the rigour of the Roman lawyers relaxed on the necessity of the case. Persons who kept houses of ill fame were with them incompetent witnesses; yet among the maxims of that law, the rule is well known of, "*Testes Lupanares in re Lupanari.*"

In ordinary cases, they require two witnesses to prove a fact; and therefore they held, "that if there be but one witness, and no probable grounds of presumption of some kind (*nulla argumenta*) that one witness is by no means to be heard;" and it is not inelegantly said in that case, "the failure is not in the law but in the proof." *Non jus deficit sed Probatio.* But if other grounds of presumption appear, one witness is to be heard; "for it is not necessary that one crime should be established by one sort of proof only, as by witnesses, or by documents, or by presumptions; all the modes of evidence may be so conjoined, that where none of them alone would affect the prisoner, all the various concurrent proofs should overpower him, like a storm of hail."

This is held particularly true, in cases where crimes are secret, and detection difficult.

The necessity of detecting and punishing such crimes superseded, in the soundest authors, this theoretic aim at perfection, and obliged technical science to submit to practical expedience. *In re Criminali*, said the rigourists, *Probationes debent esse evidentes et Luce meridianâ clariores*; and so undoubtedly it is in offences which admit such proof. But reflection taught them, that even their favourite rules of incompetence must give way to the exigencies of distributive justice. One of the best modern writers on the imperial criminal law, particularly as practised in Saxony (Carpzovius), says, "This alone I think it proper to remark, that even incompetent witnesses are sometimes admitted, if otherwise the truth cannot be got at; and this particularly in facts and *crimes which are of difficult proof*;" —and for this doctrine, he cites Farinacius, Mascardus,

and other eminent civilians who had written on evidence. — He proceeds afterwards; "however, this is to be taken with a caution, that the impossibility of otherwise discovering the truth, is not construed from hence, that other witnesses were not actually concerned, but that from *the nature of* the crime, or from regard *had to the place and time, other witnesses* could not be present."

Many other passages from the same authority, and from others to a similar effect, might be added: we shall only remark shortly that Gaill*, a writer on the practice of that law, the most frequently cited in our own courts, gives the rule more in the form of a maxim: "That the law is contented with such proof as *can* be made, if the subject *in its nature* is difficult of proof." And the same writer, in another passage, refers to another still more general maxim (and a sound maxim it is) that the power and means of proof *ought not to be narrowed but enlarged, that the truth may not be concealed: — Probationum facultas non angustari, sed ampliari debeat, ne veritas occultetur.* †.

On the whole, your committee can find nothing in the writings of the learned in this law, any more than they could discover any thing in the law of parliament to support any one of the determinations given by the judges, and adopted by the Lords, against the evidence which your committee offered, whether direct and positive, or merely (as for the greater part it was) circumstantial, and produced as a ground to form legitimate presumption against the defendant: nor, if they were to admit (which they do not) this civil law to be of authority in furnishing any rule in an impeachment of the Commons, more than as it may occasionally furnish a principle of reason on a new or undetermined point, do they find any rule or any principle derived from that law, which could or ought to have made us keep back the evidence which we offered. On the contrary, we rather think those rules and principles to be in agreement with our conduct.

* Lib. ii. Obs. 149. § 9. † Lib. i. Obs. 91. § 7.

As to the canon law, your committee, finding it to have adopted the civil law with no very essential variation, does not feel it necessary to make any particular statement on that subject.

Your committee then came to examine into the authorities in the English law, both as it has prevailed for many years back, and as it has been recently received in our courts below. They found on the whole the rules rather less strict, more liberal, and less loaded with positive limitations than in the Roman law. The origin of this latitude may perhaps be sought in this circumstance, which we know to have relaxed the rigour of the Roman law — courts in England do not judge upon evidence, *secundum allegata et probata*, as in other countries, and under other laws they do, but upon verdict. By a fiction of law, they consider the jury as supplying in some sense the place of testimony. One witness (and for that reason) is allowed sufficient to convict, in cases of felony, which in other laws is not permitted.

In ancient times it has happened to the law of England, (as in pleading, so in matter of evidence,) that a rigid strictness in the application of technical rules has been more observed than at present it is. In the more early ages, as the minds of the judges were in general less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, and as the matters which came before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it, than from an endeavour towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them. In those times, that judicial policy was not to be condemned. We find too that, probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred, according to the then philosophy of the schools, in habits of great subtlety and refinement of distinction, and having once

taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness; and this seems to have been the course which laws have taken in every nation. *

It was probably from this rigour, and from a sense of its pressure, that, at an early period of our law, far more causes of criminal jurisdiction were carried into the House of Lords, and the council board, where laymen were judges, than can or ought to be at present.

As the business of courts of equity became more enlarged and more methodical; as magistrates, for a long series of years, presided in the court of chancery, who were not bred to the common law; as commerce, with its advantages and its necessities, opened a communication more largely with other countries; as the law of nature and nations (always a part of the law of England) came to be cultivated; as an increasing empire; as new views and new combinations of things were opened, this antique rigour and over-done severity gave way to the accommodation of human concerns, for which rules were made, and not human concerns to bend to them.

At length, Lord Hardwicke, in one of the cases † the most solemnly argued that has been in man's memory, with the aid of the greatest learning at the bar, and with the aid of all the learning on the bench, both bench and bar being then supplied with men of the first form, declared from the bench, and in concurrence with the rest of the judges, and with the most learned of the long robe, the able council on the side of the old restrictive principles making no reclamation —

* Antiqua jurisprudentia aspera quidem illa, tenebricosa, et tristis, non tam in æquitate, quam in verborum superstitione fundata, eaque Ciceronis ætatem fere attigit, mansitque annos circiter 350. Quæ hanc excepit, viguitque annos fere 79, superiori longe humanior; quippe quæ magis utilitate communi, quam potestate verborum, negotia moderaretur. *Gravina*, p. 86.

† Omichund v. Barker, Atk. i.

"That the judges and sages of the law have laid it down, that there is but ONE general rule of evidence — *the best that the nature of the case will admit.*"

This, then, the master rule, that governs all the subordinate rules, does in reality subject itself and its own virtue and authority *to the nature of the case*; and leaves no rule at all of an independent, abstract, and substantive quality.

Sir Dudley Ryder, (then attorney-general, afterwards chief justice,) in his learned argument, observed, that

"It is extremely proper that there should be *some* general rules in relation to evidence; but, *if exceptions were not allowed to them, it would be better to demolish all the general rules.*

"There is no general rule without exception that we know of, but this, that *the best evidence shall be admitted which the nature of the case will afford.*

"I will shew that rules, as general as this, are broke in upon, *for the sake of allowing evidence.*

"There is no rule that seems more binding, than that a man shall not be admitted an *evidence in his own case*, and yet the statute of hue and cry is an exception.

"A man's books are allowed to be evidence, or, which is in substance the same, his servant's books, *because the nature of the case requires it*; as in the case of a brewer's servants.

"Another general rule, that a wife cannot be witness against her husband, has been broken in upon in cases of treason.

"Another exception to the general rule, *that a man may not be examined without oath*: the last words of a dying man are given in evidence in the case of murder." Such are the doctrines of this great lawyer.

Chief Justice Willes concurs with Lord Hardwicke as to dispensing with strict rules of evidence. "Such evidence is to be admitted as the *necessity* of the case will allow of; as, for instance, a marriage at Utrecht, certified under the seal of the minister there, and of the said town, and

that they cohabited together as man and wife, was held to be sufficient proof that they were married."

This learned judge (commenting upon Lord Coke's doctrine, and Serjeant Hawkins after him, that the oaths of Jews and Pagans were not to be taken,) says, "That this notion, though advanced by so great a man, is contrary to religion, common sense, and common humanity; and I think the devils, to whom he has delivered them, could not have suggested any thing worse."

Chief Justice Willes, admitting Lord Coke to be a great lawyer, then proceeds in very strong terms, and with marks of contempt, to condemn "*his narrow notions;*" and he treats with as little respect or decorum the ancient authorities referred to in defence of such notions.

The principle of the departure from those rules is clearly fixed by Lord Hardwicke; he lays it down as follows: "The first ground judges have gone upon in departing from strict rules, *is absolute strict necessity.* 2dly, A *presumed* necessity." Of the first he gives these instances: "In the case of writings subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed. Where an original is lost, a *copy* may be admitted; if no *copy*, then a proof by witnesses who have *heard* the deed; and *yet it is a thing the law abhors, to admit the memory of man for evidence.*"

This enlargement through too stages of proof, both of them contrary to the rule of law, and both abhorrent from its principles, are by this great judge accumulated upon one another, and are admitted, from *necessity*, to accommodate human affairs, and to prevent that which courts are, by every possible means, instituted to prevent — A FAILURE OF JUSTICE.

And this necessity is not confined within the strict limits of physical causes, but is more lax, and takes in *moral, and even presumed and argumentative necessity;* a necessity which is, in fact, nothing more than a great degree of expediency. The law creates a fictitious necessity against the rules of evidence in favour of the convenience of trade: an

exception which, on a similar principle, had before been admitted in the civil law, as to mercantile causes, in which the books of the party were received, to give full effect to an insufficient degree of proof, called, in the nicety of their distinctions, a *semiplena probatio.* *

But to proceed with Lord Hardwicke; —he observes, that "a tradesman's books (that is, the acts of the party interested himself) are admitted as evidence, though no *absolute necessity*, but by reason of a *presumption* of necessity only *inferred* from the nature of commerce.

"No rule," continued Lord Hardwicke, "can be more settled, than that testimony is not to be received but upon *oath*;" but he lays it down, that an oath itself may be dispensed with. "There is another instance," says he, "where the lawful oath may be dispensed with, where our courts admit evidence for the crown *without* oath."

In the same discussion the chief baron (Parker) cited cases, in which *all* the rules of evidence had given way. "There is not a more general rule," says he, "than that hearsay cannot be admitted, nor husband and wife as witnesses against each other; and yet it is *notorious*, that from necessity they have been allowed; not an *absolute* necessity, but a *moral* one.

It is further remarkable, in this judicial argument, that exceptions are allowed not only to rules of evidence, but that the rules of evidence themselves are not altogether the same, where the subject-matter varies. The judges have, to facilitate justice, and to favour commerce, even adopted the rules of *foreign* laws.—They have taken for granted, and would not suffer to be questioned, the regularity and justice of the proceedings of foreign courts, and they have admitted them as evidence, not only of the fact of the decision, but of the right as to its legality —where there are *foreign parties interested*, and in "*commercial* matters, *the rules of evidence are not quite the same* as in other instances

* Gaill. Lib. ii. Obs. 20. § 5.

in courts of justice. The case of hue and cry, Brownlow, 47., a feme covert is not a lawful witness against her husband, except in cases of treason, but has been admitted in civil cases *. The testimony of a public notary is evidence *by the law of France*; contracts are made before a public notary, and no other witness necessary. I should think it would be no doubt at all, if it came in question here, whether this would be a valid contract; but a testimony from persons of that credit and reputation would be received as a very good proof in foreign transactions, and would authenticate the contract." Cro. Charl. 365.

These cases shew, that courts always govern themselves by these rules in cases of foreign transactions. To this principle Lord Hardwicke accords; and enlarging the rule of evidence by the nature of the subject, and the exigencies of the case, he lays it down, "that it is a common and *natural* presumption, that persons of the Gentoo religion should be principally apprized of facts and transactions in their own country. As the English have only a factory in this country, for it is in the empire of the Great Mogul, if we should admit this evidence, (Gentoo evidence on a Gentoo oath,) it would be agreeable to the genius of the law of England." For this he cites the proceedings of our court of admiralty, and adopts the author, who states the precedent, "That this court will give *credit* to the sentence of the court of admiralty in France, and *take it to be* according to right, and will not examine their proceedings; for it would be found *very inconvenient* if one kingdom should, by *peculiar laws*, correct the judgments and proceedings of another kingdom."

Such is the *genius of the law of* England, that these two principles of the general moral necessities of things, and

* *N. B.* In some criminal cases also, though not of treason, husband is admitted to prove an assault upon his wife, for the king, ruled by Raymond, chief justice, Trin. 11th Geo. King v. Azire. And for various other exceptions. See Buller's Nisi Prius, 286, 287.

the nature of the case, over-rule every other principle, even those rules which seem the very strongest.

Chief Baron Parker, in answer to an objection made against the infidel deponent, "That the plaintiff ought to have shewn that he could not have the evidence of Christians." "I answer (said the chief baron), that, *repugnant to natural* justice, in the statute of hue and cry, the robbed is admitted to be witness of the robbery, as a *moral or presumed necessity is sufficient.*"

The same learned magistrate, pursuing his argument in favour of liberality in opening and enlarging the avenues to justice, does not admit "that the authority of one or two cases" is valid against reason, equity, and convenience, the vital principles of the law. He cites Wells *versus* Williams, 1 Raymond, 282., to shew that the necessity of trade has mollified the *too rigorous rules of the old law*, in their restraint and discouragement of aliens. "A Jew may sue at *this* day, but *heretofore he could not*, for then they were looked upon as enemies, but now *commerce has taught the world more humanity;* and therefore held that an alien enemy, commorant here by the licence of the king, and under his protection, may maintain a debt upon a bond, though he did not come with safe conduct."

So far Parker, concurring with Raymond. — He proceeds, "It was objected by the defendant's counsel, that this is a novelty, and that what never has been done ought not to be done. The answer is, *the law of England is not confined to particular cases, but is much more governed by reason than by any one case whatever.* The true rule is laid down by Lord Vaughan, fol. 37, 38., where the law, saith he, is *known and clear*, the judges must determine as the law is, without regard to the inequitableness or inconveniency. These defects, if they happen in the law, can only be remedied by parliament; but where the law is *doubtful and not clear*, the judges ought to interpret the law to be as is most consonant to *equity*, and what is least *inconvenient.*"

These principles of equity, convenience, and natural

reason, Lord Chief Justice Lee considered in the same ruling light, not only as guides in matter of interpretation concerning law in general, but, in particular, as controllers of the whole law of evidence, *which being artificial, and made for convenience, is to be governed by that convenience for which it is made*, and is to be wholly subservient to the stable principles of substantial justice. "I do apprehend," said that chief justice, "that the rules of evidence are to be considered as *artificial* rules, framed by men for *convenience in courts of justice*. This is a case that ought to be looked upon in that light; and I take it, that considering evidence in this way, (*viz.* according to natural justice,) *is agreeable to the genius of the law of England.*"

The sentiments of Murray, then solicitor-general, afterwards Lord Mansfield, are of no small weight in themselves, and they are authority by being judicially adopted. His ideas go to the growing melioration of the law, by making its liberality keep pace with the demands of justice, and the actual concerns of the world; not restricting the infinitely diversified occasions of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our empire. This enlargement of our concerns, in the year 1744, he appears almost to have foreseen, and he lived to behold it. "The arguments on the other side," said that great light of the law, (that is, arguments against admitting the testimony in question from the novelty of the case,) "prove nothing. Does it follow from thence, that *no witnesses can be examined in a case that never specifically existed before?* or that an action cannot be brought in a case that never happened before? *Reason* (being stated to be the first ground of all laws, by the author of the book called Doctor and Student,) must determine the case. Therefore the only question is, whether upon *principles of reason, justice, and convenience, this witness be admissible?*

"Cases in law depend upon the *occasions* which gave rise to them. All occasions do not arise at once: now a *particular species of Indians appears; hereafter another*

species of Indians may arise *. *A statute* can seldom take in all cases; therefore the *common law, that works itself pure by rules drawn from the fountain of justice*, is for this reason superior to an act of parliament."

From the period of this great judgment to the trial of Warren Hastings, Esq. the law has gone on continually working itself pure (to use Lord Mansfield's expression), by rules drawn from the fountain of justice. "General rules," said the same person when he sat upon the † bench, "are wisely established for attaining justice with ease, certainty, and dispatch. But the great end of them being to *do justice*, the court will see that it be *really obtained*. The courts have been more *liberal* of late years in their determinations, and have more endeavoured to attend to the *real* justice of the case than formerly."

On another occasion, of a proposition for setting aside a verdict, he said, "This seems to be the *true way to come at justice*, and what we therefore ought to do; for the true text is, *Boni judicis est ampliari justitiam* (not *jurisdictionem*, as has been often cited)." In conformity to this principle, the supposed rules of evidence have, in late times and judgments, instead of being drawn to a greater degree of strictness, been greatly relaxed. ‡

"*All evidence is according to the subject-matter to which it is applied.* There is a great deal of difference between length of time that operates as a *bar* to a claim, and that which is used only by way of evidence.—Length of time, used merely by way of evidence, may be left to the consideration of the jury, to be credited or not, or to draw their inferences one way or the other, according to circumstances.—*I do not know an instance in which proof may not be supplied.*" ||

In all cases of evidence Lord Mansfield's maxim was to

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* Omichund *versus* Barker, 1 Atkyns, *ut supra.*

† Burrow, vol. i. p. 301. Rex v. Philips, p. 302. 304. 306.

‡ Wyndham v. Chetwynd, 1 Burrow, 414.

|| Cowper's Reports, 109. Mayor of Hull v. Horner.

lean to *admissibility*, leaving the objections, which were made to competency, to go to credit, and to be weighed in the minds of the jury, after they had heard it. — In objections to wills, and to the testimony of witnesses to them, he thought "it clear that the judges ought to lean *against* objections to the formality." *

Lord Hardwicke had before declared, with great truth, "that the boundaries of what goes to the credit, and what to the competency, *are very nice, and the latter carried too far*; and in the same case he said, "that unless the objection appeared to him to carry a strong danger of perjury, and some apparent advantage might accrue to the witness, he was always inclined to let it go to his credit, only *in order to let in a proper light to the case, which would otherwise be shut out; and in a doubtful case*, he said, it was generally his custom to *admit the evidence*, and give such directions to the jury as the *nature of the case* might require." †

It is a known rule of evidence, that an interest in the matter to be supported by testimony disqualifies a witness; yet Lord Mansfield held, "that *nice* objections to a remote interest, which could not be paid or released, (though they held in other cases,) were not allowed to disqualify a witness to a will, as parishioners might have a devise to the use of the poor of the parish for ever." He went still nearer, and his doctrine tends so fully to settle the principles of departure from, or adherence to, rules of evidence, that your committee inserts part of the argument at large.

"The disability of a witness from *interest* is very different from a *positive incapacity*. If a deed must be acknowledged before a judge or notary public, every other person is under a *positive* incapacity to authenticate it; but objections of *interest are deductions from natural reason*,

* Abrahams v. Bunn, p. 2254. The whole case is well worth reading.
† King v. Bray.

and proceed upon a *presumption* of too great a bias in the mind of the witness, and the *public utility* of rejecting partial testimony. Presumptions stand no longer than till the contrary is proved. The presumption of bias may be taken off by shewing the witness has a great or a greater interest the other way, or that he has given it up. The presumption of public utility may be answered, *by shewing that it would be very inconvenient, under the particular circumstances, not to receive such testimony.*

"Therefore, from the course of business, necessity, and other reasons of expedience, *numberless exceptions* are allowed to the *general* rule." *

These being the principles of the latter jurisprudence, the judges have suffered no positive rule of evidence to counteract those principles†. They have even suffered subscribing witnesses to a will, which recites the soundness of mind in the testator, to be examined to prove his insanity, and then the court received evidence to overturn that testimony, and to destroy the credit of those witnesses. They were five in number, who attested to a will and codicil. They were admitted to annul the will they had themselves attested. Objections were taken to the competency of one of the witnesses in support of the will against its subscribing witnesses. 1st, That the witness was an executor in trust, and so liable to actions. 2dly, As having acted under the trust, whereby, if the will were set aside, he would be liable to answer for damages incurred by the sale of the deceased's chambers to a Mr. Frederick. Mr. Frederick offered to submit to a rule to release for the sake of public justice. Those who maintained the objection cited Siderfin, a reporter of much authority, 51. 115. and 1 Keble, 134. Lord Mansfield, chief justice, did not controvert those authorities; but in the course of obtaining substantial justice, he treated both of them with equal con-

* Wyndham v. Chetwynd.

† Lowe v. Joliffe. 1 Black. J. p. 366.

tempt, though determined by judges of high reputation. His words are remarkable: "We do not *now* sit here to take our rules of evidence from Siderfin and Keble." He over-ruled the objection upon more recent authorities, which, though not in similar circumstances, he considered as within the reason. The court did not think it necessary that the witness should release, as he had offered to do.

"It appeared on this trial (says Justice Blackstone), that a black conspiracy was formed to set aside the gentleman's will, without any foundation whatever." A prosecution against three of the testamentary witnesses was recommended, who were afterwards convicted of perjury. Had strict formalities, with regard to evidence, been adhered to in any part of this proceeding, that very black conspiracy would have succeeded, and those black conspirators, instead of receiving the punishment of their crimes, would have enjoyed the reward of their perjury.

Lord Mansfield, it seems, had been misled in a certain case with regard to precedents *. His opinion was against the reason and equity of the supposed practice, but he supposed himself not at liberty to give way to his own wishes and opinions. On discovering his error, he considered himself as freed from an intolerable burthen, and hastened to undo his former determination. "There are no precedents," said he, with some exultation, "which stand in the way of our determining *liberally, equitably*, and according to the *true* intention of the parties." In the same case, his learned assessor, Justice Wilmot, felt the same sentiments. His expressions are remarkable: "Courts of law ought to concur with courts of equity in the execution of those powers which are very *convenient* to be inserted in settlements; and *they ought not to listen to nice distinctions* that *savour of the schools*, but to be guided by *true good sense* and manly reason. After the statute of uses, it is much to be lamented that the courts of common law had

* Burrow, 1147. Zouch *ex dimiss.* Woolston v. Woolston.

not adopted all the rules and maxims of courts of equity. This would have prevented the absurdity of receiving costs in one court, and paying them in another." Your committee does not produce the doctrine of this particular case as directly applicable to their charge, no more than several of the others here cited. We do not know on what precedents or principles the evidence proposed by us has been deemed inadmissible by the judges; therefore against the grounds of this rejection we find it difficult directly to oppose any thing. These precedents, and these doctrines, are brought to shew the general temper of the courts, their growing liberality, and the general tendency of all their reasonings and all their determinations to set aside all such technical subtleties or formal rules, which might stand in the way of the discovery of truth, and the attainment of justice. — The cases are adduced for the principles they contain.

The period of the cases and arguments we have cited was that in which large and liberal principles of evidence were more declared, and more regularly brought into system. But they had been gradually improving; and there are few principles of the later decisions which are not to be found in determinations on cases prior to the time we refer to. Not to overdo this matter, and yet to bring it with some degree of clearness before the House, your committee will refer but to a few authorities, and those which seem most immediately to relate to the nature of the cause entrusted to them. In Michaelmas, 11 W. III. The king *v.* the Warden of the Fleet, — a witness, who had really been a prisoner and voluntarily suffered to escape, was produced to prove the escape. To the witness it was objected, that he had given a bond to be a true prisoner, which he had forfeited by escaping; besides, he had been retaken. His testimony was allowed; and by the court, among other things, it was said, *in secret transactions*, if any of the parties concerned are not to be, for the necessity of the third, admitted as evidence, it will be

impossible to detect the practice; as in cases of the statute of hue and cry the party robbed shall be a witness to charge the hundred; and in the case of Cooke *v.* Watts in the Exchequer, where one who had been prejudiced by the will was admitted an evidence to prove it forged *. So in the case of King *v.* Harris †, where a feme covert was admitted as a witness for *fraudulently* drawing her in, when sole, to give a warrant of attorney for confessing a judgment on an unlawful consideration, whereby execution was sued out against her husband; and Holt, chief justice, held, that a feme covert could not, by law, be a witness to convict one on an information; yet, in Lord Audley's case, it being a rape on her person, she was received to give evidence against him, and the court concurred with him, because it was the best evidence the nature of the thing would allow.

This decision of Holt refers to others more early, and all on the same principle; and it is not of this day that this one great principle of eminent public expedience, this moral necessity ‡, "that crimes should not escape with impunity," has in all cases overborne all the common juridical rules of evidence — it has even prevailed over the first and most natural construction of acts of parliament, and that in matters of so penal a nature as high treason. It is known that statutes made, not to open and enlarge, but on fair grounds to straiten proofs, require two witnesses in cases of high treason. So it was understood without dispute, and without distinction, until the argument of a case in the high court of justice, during the usurpation: it was the case of the presbyterian minister, Love, tried for high treason, against the commonwealth, in an attempt to restore the king. In this trial, it was contended for and admitted, that one witness to one overt

* In this single point Holt did not concur with the rest of the judges.

† 1st Siderfin, p. 431.

‡ Interest Reipublicæ ut maleficia ne remaneant impunita.

act, and one to another overt act of the same treason, ought to be deemed sufficient. *

That precedent, though furnished in times from which precedents were cautiously drawn, was received as authority throughout the whole reign of Charles the Second. It was equally followed after the Revolution; and at this day it is undoubted law. It is not so from the natural or technical rules of construction of the act of parliament, but from the principles of juridical policy. All the judges who have ruled it, all the writers of credit who have written upon it, assign this reason, and this only — *That treasons being plotted in secrecy, could in few cases be otherwise brought to punishment.*

The same principle of policy has dictated a principle of relaxation, with regard to severe rules of evidence, in all cases similar, though of a lower order in the scale of criminality. It is against fundamental maxims that an accomplice should be admitted as a witness; but accomplices are admitted from the policy of justice, otherwise confederacies of crime could not be dissolved.

There is no rule more solid than that a man shall not entitle himself to profit by his own testimony. But an informer, in case of highway robbery, may obtain forty pounds to his own profit by his own evidence: this is not in consequence of positive provision in the act of parliament, — it is a provision of policy, lest the purpose of the act should be defeated.

Now, if policy has dictated this very large construction of an act of parliament, concerning high treason; if the same policy has dictated exceptions to the clearest and broadest rules of evidence, in other highly penal causes; and if all this latitude is taken concerning matters for the greater part within our insular bounds; your committee could not, with safety to the larger and more remedial

* Love's Trial, State Trials, Vol. ii. p. 144. 171. to 173. and 177.; and Foster's Crown Law, p. 235.

justice of the law of parliament, admit any rules, or pretended rules, uncorrected and uncontrolled by circumstances, to prevail in a trial, which regarded offences of a nature as difficult of detection, and committed far from the sphere of the ordinary practice of our courts.

If any thing of an over-formal strictness is introduced into the trial of Warren Hastings, Esq. it does not seem to be copied from the decisions of these tribunals. "It is with great satisfaction your committee has found, that the reproach of "disgraceful subtleties," inferior rules of evidence, which prevent the discovery of truth, of forms, and modes of proceeding, which stand in the way of that justice, the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the common law of England, or to the ordinary practice of the courts below.

Circumstantial Evidence, &c.

The rules of evidence in civil and in criminal cases, in law and in equity, being only reason methodized, are certainly the same. Your committee however finds, that the far greater part of the law of evidence to be found in our books turns upon questions relative to civil concerns. Civil cases regard property: now, although property itself is not, yet almost every thing concerning property, and all its modifications, is of artificial contrivance. The rules concerning it become more positive, as connected with positive institution. The legislator therefore always, the jurist frequently, may ordain certain methods, by which alone they will suffer such matters to be known and established, because, their very essence, for the greater part, depends on the arbitrary conventions of men. Men act on them with all the power of a creator over his creature. They make fictions of law, and presumptions of law (*presumptiones juris et de jure*) according to their ideas of utility — and against those fictions and against presumptions so created, they do and may reject all evidence.

However, even in these cases, there is some restraint. Lord Mansfield has let in a liberal spirit, against the fictions of law themselves; and he declared, that he would do what in one case he actually did, and most wisely — that he would admit evidence against a fiction of law, when the fiction militated against the policy on which it was made.*

Thus it is with things which owe their existence to men: but, where the subject is of a physical nature, or of a moral nature independent of their conventions, men have no other reasonable authority, than to register and digest the results of experience and observation. Crimes are the actions of physical beings, with an evil intention abusing their physical powers against justice, and to the detriment of society. In this case fictions of law and artificial presumptions (*juris et de jure*) have little or no place. The presumptions which belong to criminal cases are those natural and popular presumptions which are only observations turned into maxims, like adages and apothegms, and are admitted (when their grounds are established) in the place of proof, where better is wanting, but are to be always overturned by counter proof.

These presumptions mostly go to the *intention*. In all criminal cases, the crime (except where the law itself implies malice) consists rather in the intention than the action. Now, the intention is proved but by two ways; either, 1st, by confession — this first case is rare but simple; — 2dly, by circumstantial proof. This is difficult, and requires care and pains: the connection of the intention and the circumstances is plainly of such a nature as more to depend on the sagacity of the observer, than on the excellence of any rule. The pains taken by the civilians on that subject have not been very fruitful; and the English law writers have, perhaps, as wisely, in a manner abandoned the pursuit.

In truth, it seems a wild attempt to lay down any rule

* Burrow, 815. Copendal v. Bridgen.

for the proof of intention by circumstantial evidence; all the acts of the party; all things that explain or throw light on these acts; all the acts of others relative to the affair, that come to his knowledge, and may influence him; his friendships and enmities, his promises, his threats, the truth of his discourses, the falsehood of his apologies, pretences, and explanations, his looks, his speech; his silence where he was called to speak; every thing which tends to establish the connection between all these particulars; — every circumstance, precedent, concomitant, and subsequent, become parts of circumstantial evidence. These are in their nature infinite, and cannot be comprehended within any rule, or brought under any classification.

Now, as the force of that presumptive and conjectural proof, rarely, if ever, depends on one fact only, but is collected from the number and accumulation of circumstances concurrent in one point, we do not find an instance, until this trial of Warren Hastings, Esq. (which has produced many novelties) that attempts have been made by any court to call on the prosecutor for an account of the purpose for which he means to produce each particle of this circumstantial evidence, to take up the circumstances one by one, to prejudge the efficacy of each matter separately in proving the point; and thus to break to pieces and to garble those facts, upon the multitude of which, their combination, and the relation of all their component parts to each other and to the culprit, the whole force and virtue of this evidence depends. To do any thing which can destroy this collective effect is to deny circumstantial evidence.

Your committee too cannot but express their surprize, at the particular period of the present trial, when the attempts to which we have alluded first began to be made. The two first great branches of the accusation of this House against Warren Hastings, Esq. relate to public and notorious acts, capable of direct proof; such as the expulsion of Cheit Sing, with its consequences on the province of Benares, and the seizure of the treasures and

jaghires of the begums of Oude. Yet, in the proof of those crimes, your committee cannot justly complain, that we were very narrowly circumscribed in the production of much circumstantial as well as positive evidence. We did not find any serious resistance on this head, till we came to make good our charges of secret crimes; crimes of a class and description, in the proof of which all judges of all countries have found it necessary to relax almost all their rules of competency; such crimes as peculation, pecuniary frauds, extortion, and bribery. Eight out of nine of the questions put to the judges by the lords, in the first stage of the prosecution, related to circumstances offered in proof of these secret crimes.

Much industry and art have been used, among the illiterate and unexperienced, to throw imputations on this prosecution, and its conduct, because so great a proportion of the evidence offered on this trial (especially on the latter charges) has been circumstantial. Against the prejudices of the ignorant, your committee opposes the judgment of the learned. It is known to them that, when this proof is in its greatest perfection, that is when it is most abundant in circumstances, it is much superior to positive proof; and for this we have the authority of the learned judge who presided at the trial of Captain Donellan:

"On the part of the prosecution, a great deal of evidence has been laid before you. It is *all* circumstantial evidence, and in its nature it must be so; for, in cases of this sort, no man is weak enough to commit the act in the presence of other persons, or to suffer them to see what he does at the time; and therefore it can only be made out by circumstances, either before the committing of the act, at the time when it was committed, or subsequent to it; and a presumption, which necessarily arises from circumstances, is very often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to

amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances. But if the circumstances are such as, when laid together, bring conviction to your minds, it is then fully equal, if not, as I told you before, *more* convincing than positive evidence."

In the trial of Donellan no such selection was used as we have lately experienced; no limitation to the production of every matter, before, at, and after the fact charged.

The trial was (as we conceive) rightly conducted by the learned judge — because secret crimes, such as secret assassination, poisoning, bribery, peculation, and extortion, (the three last of which this House has charged upon Mr. Hastings) can very rarely be proved in any other way. That way of proof is made to give satisfaction to a searching, equitable, and intelligent mind; and there must not be a failure of justice. Lord Mansfield has said that he did not know a case, in which proof might not be supplied.*

Your committee has resorted to the trial of Donellan; and they have, and do much rely upon it, first, on account of the known learning and ability of the judge who tried the cause, and the particular attention he has paid to the subject of evidence, which forms a book in his treatise on Nisi Prius. Next, because, as the trial went *wholly* on circumstantial evidence, the proceedings in it furnish some of the most complete and the fullest examples on that subject. 3dly, Because the case is recent; and the law cannot be supposed to be materially altered since the time of that event.

Comparing the proceedings on that trial, and the doctrines from the bench, with the doctrines we have heard from the woolsack, your committee cannot comprehend how they can be reconciled.

For, the lords compelled the managers to declare for

* Vide supra.

what purpose they produced each separate member of their circumstantial evidence; a thing, as we conceive, not usual, and particularly not observed in the trial of Donellan. We have observed in that trial, and in most others which we have had occasion to resort to, that the prosecutor is suffered to proceed narratively and historically, without interruption. If indeed it appears on the face of the narration, that what is represented to have been said, written, or done, did not come to the knowledge of the prisoner, a question sometimes, but rarely, has been asked, whether the prisoner could be affected with the knowledge of it. When a connection with the person of the prisoner has been in any way shewn, or even promised to be shewn, the evidence is allowed to go on without further opposition. The sending of a sealed letter, the receipt of a sealed letter inferred from the delivery to the prisoner's servant, the bare possession of a paper written by any other person, on the presumption that the contents of such letters, or such paper, were known to the prisoner; and the being present when any thing was said or done, on the presumption of his seeing or hearing what passed, have been respectively ruled to be sufficient. If, on the other hand, no circumstance of connection has been proved, the judge, in summing up, has directed the jury to pay no regard to a letter or conversation, the proof of which has so failed, — a course much less liable to inconvenience, where the same persons decide both the law and the fact.*

To illustrate the difficulties to which your committee was subjected on this head, we think it sufficient to submit to the House (reserving a more full discussion of this im-

* Girdwood's Case, Leach, p. 128. Gordon's Case, Ibid. p. 245. Lord Preston's Case, St. Tr. iv. p. 439. Layer's Case, St. Tr. vi. p. 279. Foster's Crown Law, p. 198. Canning's Trial, St. Tr. x. p. 263. 270. Trial of the Duchess of Kingston, St. Tr. xi. p. 244. Trial of Huggins, St. Tr. ix. p. 119. 120. 135.

portant point to another occasion) the following short statement of an incident which occurred in this trial:

By an express order of the court of directors (to which by the express words of the act of parliament under which he held his office he was ordered to yield obedience) Mr. Hastings and his colleagues were directed to make an inquiry into all offences of bribery and corruption in office. — On the 11th of March a charge, in writing, of bribery and corruption in office was brought against himself. On the 13th of the same month, the accuser, a man of high rank, the rajah Nundcomar, appears personally before the council to make good his charge against Mr. Hastings before his own face. Mr. Hastings thereon fell into a very intemperate heat, obstinately refused to be present at the examination, attempted to dissolve the council, and contumaciously retired from it. Three of the other members, a majority of the council, in execution of their duty, and in obedience to the orders received under the act of parliament, proceeded to take the evidence, which is very minute and particular, and was entered in the records of the council by the regular official secretary. It was afterwards read in Mr. Hastings's own presence, and by him transmitted, under his own signature, to the court of directors. A separate letter was also written by him, about the same time, desiring, on his part, that in any inquiry into his conduct "not a single word should escape observation."

This proceeding in the council, your committee, in its natural order, and in a narrative chain of circumstantial proof, offered in evidence. — It was not permitted to be read — and on the 20th and 21st of May 1789, we were told from the woolsack, "that when a paper is not evidence by itself" (such this part of the consultation it seems was reputed) "a party who wishes to introduce a paper of that kind, is called upon not only to state, but to make out on proof, *the whole of the grounds upon which he proceeds to make that paper proper evidence.*— That the evidence that is produced must be *the demeanour* of the

party respecting that paper; and it is the connection between them, *as material to the charge depending*, that will enable them to be produced."

Your committee observes, that this was not a paper *foreign* to the prisoner, and sent to him *as a letter*, the receipt of which, and his conduct thereon, were to be brought home to him, to infer his guilt from his demeanour. It was an office document of his own department, concerning himself, and kept by officers of his own, and by himself transmitted, as we have said, to the court of directors. Its proof was in the record. The charge made against him, and his demeanour on being acquainted with it, were not in separate evidence. They all lay together, and composed a connected narrative of the business, authenticated by himself.

In that case it seems to your committee extremely irregular and preposterous to demand previous and extraneous proofs of the demeanour of the party respecting the paper, and the connection between them, as *material to the charge* depending; for this would be to try what the effect and operation of the evidence would be on the issue of the cause, before its production.

The doctrine so laid down, demands that every several circumstance should in itself be conclusive, or at least should afford a violent presumption; it must, we were told, without question, be material to the charge depending: but, as we conceive, its materiality, more or less, is not in the first instance to be established. To make it admissible, it is enough to give proof, or to raise a legal inference of its connection both with the charge depending, and the person of the party charged, where it does not appear on the face of the evidence offered. Besides, by this new doctrine, the materiality required to be shewn must be decided from a consideration, not of the whole circumstance, but in truth of one half of the circumstance of a demeanour, unconnected with, and unexplained by that on which it arose, though the connection between the demeanour of the party and the paper is that which must

be shewn to be material. Your committee, after all they have heard, is yet to learn how the full force and effect of any demeanour, as evidence of guilt or innocence, can be known, unless it be also fully known *to what that demeanour applied;* unless when a person did or said any thing, it be known, not generally and abstractedly, that a paper was read to him, but particularly and specifically *what were the contents of that paper:* whether they were matters lightly or weightily alleged; within the power of the party accused to have confuted on the spot, if false; or such as, though he might have denied, he could not instantly have disproved. The doctrine appeared, and still appears, to your committee to be totally abhorrent from the genius of circumstantial evidence, and mischievously subversive of its use. We did, however, offer that extraneous proof which was demanded of us, but it was refused, as well as the office document.

Your committee thought themselves the more bound to contend for every mode of evidence *to the intention;* because in many of the cases the gross fact was admitted, and the prisoner and his counsel set up pretences of public necessity and public service for his justification. No way lay open for rebutting this justification, but by bringing out all the circumstances attendant on the transaction.

Order and Time of Producing Evidence.

Your committee found great impediment in the production of evidence, not only on account of the general doctrines supposed to exist concerning its inadmissibility drawn from its own alleged natural incompetency, or from its inapplicability under the pleading of the impeachment of this House; but also from the mode of proceeding in bringing it forward. Here evidence which we thought necessary to the elucidation of the cause was not suffered, upon the supposed rules of *examination in chief, and cross examination* — and on supposed rules, forming a distinction between evidence *originally* produced on the charge, and evidence offered on *the reply.*

On all these, your committee observes in general, that if the rules which respect the substance of the evidence are (as the great lawyers on whose authority we stand assert they are) no more than rules of convenience, much more are those subordinate rules which regard the order, the manner, and the time of the arrangement. These are purely arbitrary; without the least reference to any fixed principle in the nature of things, or to any settled maxim of jurisprudence, and consequently are variable at every instant, as the conveniences of the cause may require.

We admit that in the order of mere arrangement, there is a difference between examination of witnesses in chief and cross examination, and that in general these several parts are properly cast, according to the situation of the parties in the cause; but there neither is nor can be any precise rule to discriminate the exact bounds between examination and cross examination. So as to time, there is necessarily some limit, but a limit hard to fix: the only one which can be fixed with any tolerable degree of precision is, when the judge, after fully hearing all parties, is to consider of his verdict or his sentence. Whilst the cause continues under hearing in any shape, or in any stage of the process, it is the duty of the judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves, through negligence, ignorance, or corrupt collusion, should not bring it forward. A judge is not placed in that high situation merely as a passive instrument of parties: he has a duty of his own, independent of them, and that duty is to investigate the truth. There may be no prosecutor.—In our law a permanent prosecutor is not of necessity. The crown prosecutor in criminal cases is a grand jury; and this is dissolved instantly on its findings and its presentments. But if no prosecutor appears (and it has happened more than once) the court is obliged through its officer, the clerk of the arraigns, to examine and cross-examine every witness who presents himself; and the judge is to see it done effectually, and to act his own part in it; and this as long as evidence shall

be offered within the time which the mode of trial will admit.

Your committee is of opinion, that if it has happened, that witnesses or other kinds of evidence have not been frequently produced after the closing of the prisoner's defence, or such evidence has not been in reply given, it has happened from the peculiar nature of our common judicial proceedings, in which all the matter of evidence must be presented, whilst the bodily force and the memory, or other mental faculties of men, can hold out. This does not exceed the compass of one natural day, or thereabouts; during that short space of time, new evidence very rarely occurs for production by any of the parties; because the nature of men, joined to the nature of the tribunals, and of the mode of trial at common law (good and useful on the whole) prescribe limits which the mere principles of justice would of themselves never fix.

But in other courts, such as the court of chancery, the courts of admiralty jurisdiction (except in prize causes under the act of parliament) and in the ecclesiastical courts wherein the trial is not by an inclosed jury in those courts, such strait limits are not of course necessary: the cause * is continued by many adjournments; as long as the trial lasts, new witnesses are examined, even after the regular stage for each party, on a special application, under the circumstances, to the sound discretion of the court, where the evidence offered is newly come to the knowledge or power of the party, and appears on the face of it to be material in the cause. *Even after hearing*, new witnesses have been examined, or former witnesses re-examined, not as the right of the parties, but *ad informandam conscientiam judicis.* All these things are not unfrequent in some, if not in all of these courts, and perfectly known to the judges of Westminster-hall, who cannot be supposed ignorant of the prac-

* Harrison's Practice of Chancery, Vol. ii. p. 46. 1. Ch. Ca. 228. 1. Ch. Ca. 25. Oughton, tit. 81, 82, 83. Do. tit. 116.; Viner, tit. Evidence, (P. a.)

tice of the court of chancery; and who sit to try appeals from the admiralty and ecclesiastical courts as delegates.

But as criminal prosecutions, according to the forms of the civil and canon law, are neither many nor important in any court of this part of the kingdom, your committee thinks it right to state the undisputed principle of the imperial law, from the great writer on this subject before cited by us; — from Carpzovius. He says, "that a doubt has arisen whether evidence being once given in a trial on a public prosecution (*in processu inquisitorio*) and the witnesses being examined, it may be allowed to form other and new articles, and to produce new witnesses*." Your committee must here observe, that the *processus inquisitorius* is that proceeding in which the prosecution is carried on in the name of the judge acting *ex officio*; from that duty of his office, which is called the *nobile officium judicis*. For the judge under the imperial law possesses both those powers, the inquisitorial and the judicial, which in the high court of parliament are more aptly divided and exercised by the different Houses; and in this kind of process the House will see that Carpzovius couples the production of new witnesses and the forming of new articles (the undoubted privilege of the Commons) as intimately and necessarily connected. He then proceeds to solve the doubt: "Certainly" (says he) "there are authors who deny, that after publication of the depositions, any new witnesses and proofs, that can affect the prisoner, ought to be received, which" (says he) "is true in a case where a private prosecutor has intervened who produces the witnesses. But if the judge proceeds by way of inquisition *ex officio*, then, even after the completion of the examination of witnesses against the prisoner, new witnesses may be received and examined; and on new grounds of suspicion arising, new articles may be formed according to the common opinion of the doctors; and as it is the most generally received, so it is most agreeable to reason."

* Carpz. Pract. Saxon. Crimin. Part iii. Quest. 114. No. 13.

And in another chapter, relative to the ordinary criminal process by a private prosecutor, he lays it down on the authority of Angelus, Bartolus, and others, that after the right of the party prosecuting is expired the judge taking up the matter *ex officio* may direct new witnesses and new proofs, even after publication *. Other passages from the same writer, and from others, might be added; but your committee trusts that what they have produced is sufficient to shew the general principles of the imperial criminal law.

The high court of parliament bears in its modes of proceeding a much greater resemblance to the course of the court of chancery, the admiralty, and ecclesiastical courts (which are the king's courts too, and their law the law of the land) than to those of the common law.

The accusation is brought into parliament at this very day by *exhibiting articles;* which your committee is informed is the regular mode of commencing a criminal prosecution, where the office of the judge is promoted in the civil and canon law courts of this country. The answer again is usually specific, both to the fact and the law alleged in each particular article, which is agreeable to the proceeding of the civil law, and not of the common law.

Anciently the resemblance was much nearer and stronger. Selden, who was himself a great ornament of the common law, and who was personally engaged in most of the impeachments of his time, has written expressly on the judicature in parliament. In his fourth chapter, intituled, *Of Witnesses*, he lays down the practice of his time, as well as of ancient times, with respect to the proof by examination; and it is clearly a practice more similar to that of the civil than the common law.

"The practice at this day" (says he) "is to swear the witnesses in open house, and then to examine them there, *or at a committee*, either upon *interrogatories* agreed upon in the House, or such as the committee in their discretion

* Carpz. Pract. Saxon. Crimin. Part iii. Quest. 106. No. 89.

shall demand: — thus it was in ancient times, as shall appear by the precedents, so many as they are, they being very sparing to record those ceremonies, which I shall briefly recite, I then add those of later times."

Accordingly, in times so late as those of the trial of Lord Middlesex, (22 Jac. I. 1624.), upon an impeachment of the Commons, the whole course of the proceeding, especially in the mode of adducing the evidence, was in a manner the same as in the civil law: depositions were taken, and publication regularly passed; and on the trial of Lord Strafforde, both modes pointed out by Selden seem to have been indifferently used.

It follows, therefore, that this high court (bound by none of their rules) has a liberty to adopt the methods of any of the legal courts of the kingdom at its discretion; and in *sound* discretion it ought to adopt those which bear the nearest resemblance to its own constitution, to its own procedure, and to its exigencies in the promotion of justice.

There are conveniencies and inconveniencies both in the shorter and the longer mode of trial. But to bring the methods observed (if such are in fact observed) in the former, only from necessity, into the latter by choice, is to load it with the inconvenience of both, without the advantages of either. The chief benefit of any process which admits of adjournments, is that it may afford means of fuller information and more mature deliberation. — If neither of the parties have a strict right to it, yet the court or the jury, as the case may be, ought to demand it.

Your committee is of opinion, that all rules relative to laches or neglects in a party to the suit, which may cause nonsuit on the one hand, or judgment by default in the other, all things which cause the party *cadere in jure*, ought not to be adhered to in the utmost rigour, even in civil cases; but still less ought that spirit, which takes advantage of the lapses and failures on either part to be suffered to govern in causes criminal. "Judges ought to *lean* against every attempt to *nonsuit* a plaintiff on objections which have no relation to the *real merits*. It is unconscionable

in a defendant to take advantage of the *apices litigandi* — against such objections, *every possible presumption ought to be made which ingeniuity can suggest.* How disgraceful would it be to the administration of justice to allow *chicane* to obstruct right* !" This observation of Lord Mansfield applies equally to every means by which, indirectly as well as directly, the cause may fail upon any other principles than those of its merits. He thinks, that all the resources of ingenuity ought to be employed to baffle *chicane*, not to support it. The case in which Lord Mansfield has delivered this sentiment is merely a civil one. In civil causes of *meum & tuum*, it imports little to the commonwealth, whether Titus or Mævius profits of a legacy; or whether John a Nokes or John a Stiles is seised of the manor of Dale. For which reason, in many cases, the private interests of men are left by courts to suffer by their own neglects, and their own want of vigilance, as their fortunes are permitted to suffer from the same causes in all the concerns of common life. But in crimes, where the prosecution is on the part of the public (as all criminal prosecutions are, except appeals,) the public prosecutor ought not to be considered as a plaintiff in a cause of *meum & tuum*; nor the prisoner, in such a cause, as a common defendant. In such a cause, the state itself is highly concerned in the event: on the other hand, the prisoner may lose life, which all the wealth and power of all the states in the world cannot restore to him. Undoubtedly the state ought not to be weighed against justice; but it would be dreadful indeed if causes of such importance should be sacrificed to petty regulations, of mere secondary convenience, not at all adapted to such concerns, nor even made with a view to their existence. Your committee readily adopts the opinion of the learned Ryder, that it would be better if there were no such rules, than that there should be no exceptions to

* Morris v. Pugh and others, Burrow, p. 1243. See also Burrow, 4. Dickson v. Fisher. Alder v. Chip. Grey v. Smythies. Blackstone's Reports. N. B. All from the same judge, and proceeding on the same principles.

them. Lord Hardwicke declared very properly, in the case of the Earl of Chesterfield against Sir Abraham Janson, "That political arguments, in the fullest sense of the word, as they concerned the government of a nation, must be, and always have been, of great weight in the consideration of this court. Though there be no *dolus malus* in contracts, with regard to other persons, yet if the rest of mankind are concerned as well as the parties, it may be properly said, it regards the public utility *." Lord Hardwicke laid this down in a cause of *meum & tuum*, between party and party, where the public was concerned only remotely, and in the example; not as in this prosecution, when the political arguments are infinitely stronger, the crime relating, and in the most eminent degree relating, to the public.

One case has happened since the time which is limited by the order of the House for this report: it is so very important, that we think ourselves justified in submitting it to the House without delay. Your committee, on the supposed rules here alluded to, has been prevented (as of right) from examining a witness of importance in the case, and one on whose supposed knowledge of his most hidden transactions, the prisoner had himself, in all stages of this business, as the House well knows, endeavoured to raise presumptions in favour of his cause. Indeed it was his principal if not only justification, as to the *intention*, in many different acts of corruption charged upon him. The witness to whom we allude, is Mr. Larkins.

This witness came from India after your committee had closed the evidence of this House, in chief; and could not be produced before the time of the reply. Your committee was not suffered to examine him; not, as they could find, on objections to the particular question, as improper, but upon some or other of the general grounds (as they believe) on which Mr. Hastings resisted any evidence from him. The party, after having resisted his production, on

* Atykns's Reports, Vol. i. Chesterfield v. Janson.

the next sitting day admitted him; and by consent he was examined: your committee entered a protest on the minutes in favour of their right.

Your committee contended, and do contend, that by the law of parliament, whilst the trial lasts, they have full right to call new evidence, as the circumstances may afford, and the posture of the cause may demand it. This right seems to have been asserted by the managers for the Commons in the case of Lord Stafford — 32 Cha. II.*

The managers, in that case, claimed it as the right of the Commons to produce witnesses for the purpose of fortifying their former evidence. — Their claim was admitted by the court. It is an adjudged case in the law of parliament.

Your committee is well aware, that the notorious perjury and infamy of the witnesses in the trial of Lord Stafford has been used to throw a shade of doubt and suspicion on all that was transacted on that occasion. But there is no force in such an objection. Your committee has no concern in the defence of these witnesses; nor of the Lords who found their verdict on such testimony; nor of the morality of those who produced it. Much may be said to palliate errors on the part of the prosecutors and judges, from the heat of the times, arising from the great interests then agitated. But it is plain, there may be perjury in witnesses, or even conspiracy unjustly to prosecute, without the least doubt of the legality and regularity of the proceedings in any part. This is too obvious and too common to need argument or illustration.

The proceeding in Lord Stafford's case never has, now for an hundred and fourteen years, either in the warm controversies of parties, or in the cool disquisitions of lawyers or historians, ever been questioned. The perjury of the witnesses has been more doubted at some periods, than the regularity of the process has been at any period.

The learned lawyer who led for the Commons in that impeachment (Serjeant Maynard) had, near forty years be-

* State Trials, Vol. iii. p. 176.

fore, taken a forward part in the great cause of the impeachment of Lord Strafforde; and was, perhaps, of all men then in England, the most conversant in the law and usage of parliament. Jones was one of the ablest lawyers of his age. His colleagues were eminent men.

In the trial of Lord Strafforde (which has attracted the attention of history more than any other, on account of the importance of the cause itself, the skill and learning of the prosecutors, and the eminent abilities of the prisoner) after the prosecutors for the Commons had gone through their evidence on the articles; after the prisoner had also made his defence, either upon each severally, or upon each body of articles, as they had been collected into one; and the managers had, in the same manner, replied; when, previous to the general concluding reply of the prosecutors, the time of the general summing up (or recollection as it was called) of the whole evidence on the part of Lord Strafforde arrived, the managers produced new evidence. Your committee wishes to call the particular attention of the House to this case, as the contest between the parties did very nearly resemble the present; but, principally, because the sense of the lords on the law of parliament, in its proceedings with regard to the reception of evidence, is there distinctly laid down: so is the report of the judges relative to the usage of the courts below, full of equity and reason, and in perfect conformity with the right for which we contended in favour of the public, and in favour of the court of peers itself. The matter is as follows *. Your committee gives it at large:

"After this, the lord steward adjourned this House to Westminster-hall; and the peers being all set there in their places, the lord steward commanded the lieutenant of the Tower to bring forth the Earl of Strafforde to the bar; which being done, the lord steward signified, that both sides might make a recollection of their evidence, and the Earl of Strafforde to begin first.

* Lords' Journals, 17 Ch. I. Die Sabbati, videlicet, 10 Aprilis.

"Hereupon Mr. Glynn desired, that before the Earl of Strafforde began, that the Commons might produce two witnesses to the fifteenth and twenty-third articles, to prove that there be two men whose names are Berne; and so a mistake will be made clear.

"The Earl of Strafforde desired, that no new witnesses may be admitted against him, unless he might be permitted to produce witnesses on his part likewise; which the Commons consented to, so the Earl of Strafforde would confine himself to those articles upon which he made reservations, but, he not agreeing to that, and the Commons insisting upon it;

"The House was adjourned to the usual place above, to consider of it; and after some debate, their lordships thought it fit, that the members of the Commons go on in producing new witnesses, as they shall think fit, to the fifteenth and twenty-third articles; and that the Earl of Strafforde may presently produce such witnesses as are present; and such as are not, to name them presently; and to proceed on Monday next; and also, if the Commons and Earl of Strafforde would proceed upon any other articles, upon new matter, they are to name the witnesses and articles on both sides presently, and to proceed on Monday next; but both sides may waive it if they will.

"The lord steward adjourned this House to Westminster-hall; and, being returned thither, signified what the lords had thought fit for the better proceeding in the business.

"The Earl of Strafforde, upon this, desiring not to be limited to any reservation, but to be at liberty for what articles are convenient for him to fortify with new witnesses; to which the Commons not assenting, and for other scruples which did arise in the case, one of the peers did desire that the House might be adjourned, to consider further of the particulars. Hereupon the lord steward adjourned the House to the usual place above.

"The lords, being come up into the House, fell into debate of the business; and, for the better informing of

their judgments what was the course and common justice of the kingdom, propounded this question to the judges;

"Whether it be according to the course of practice, and common justice, before the judges in their several courts, for the prosecutors in behalf of the king *during the time of trial, to produce witnesses to discover the truth*, and whether the prisoner may not do the like?

"The lord chief justice delivered this, as the unanimous opinions of himself and all the rest of the judges:

"That, according to the course of practice, and common justice, before them in their several courts, upon trial by jury, *as long as the prisoner is at the bar, and the jury not sent away*, either side may give their evidence, and examine witnesses to discover truth; and this is all the opinion as we can give concerning the proceedings before us.

"Upon some consideration after this the House appointed the

Earl of Bath,
Earl of South'ton,
Earl of Hartford,
Earl of Essex,
Earl of Bristoll, and
The Lord Viscount Say et Seale,

"To draw up some reasons upon which the former order was made; which being read as followeth, were approved of, as the order of the House:

"The gentlemen of the House of Commons did declare, that they challenge to themselves, by the common justice of the kingdom, that they, being prosecutors for the king, may bring any new proofs by witnesses during the time of the evidence being not fully concluded. The lords, being judges, and so equal to them and the prisoner, conceived this their desire to be just and reasonable; and also that, by the same common justice, the prisoner may use the same liberty; and that, to avoid any occasions of delay, the lords thought fit that the articles and wit-

nesses be presently named, and such as may be presently produced to be used presently; and no further time to be given.

"The lord steward was to let them know, that if they will on both sides waive the use of new witnesses, they may proceed to the recollection of their evidence on both sides; if both sides will not waive it, then the lord steward is to read the precedent order; and, if they will not proceed then, this House is to adjourn and rise."

By this it will appear to the House, how much this exclusion of evidence, *brought for the discovery of truth*, is unsupported either by parliamentary precedent, or by the rule as understood in the common law courts below; and your committee (protesting however against being bound by any of the technical rules of inferior courts) thought and think they had a right to see such a body of precedents and arguments for the rejection of evidence during trial, in some court or other, before they were in this matter stopped and concluded.

Your committee has not been able to examine every criminal trial in the voluminous collection of the State Trials, or elsewhere: but having referred to the most laborious compiler of law and equity, Mr. Viner, who has allotted a whole volume to the title of evidence, we find but one ruled case in a trial at common law, before or since, where new evidence for the discovery of truth has been rejected as not being in due time. "*A privy verdict had been given* in B. R. 14 Eliz. *for the defendant*, but afterwards before the inquest gave their verdict openly, the plaintiff prayed that he might give more evidence to the jury, *he having* (*as it seemed*) *discovered* that the jury had found against him, but the justices would not admit him to do so: but after that Southcote, J. had been in C. B. to ask the opinion of the justices there, they took the verdict."*

In this case, the offer of new evidence was not during the

* Dal. 80. Pl. 18. Anno 24 Eliz. apud Viner Evid. p. 60.

trial. The trial was over. The verdict was actually delivered to the judge. There was also an appearance that the discovery of the actual finding had suggested to the plaintiff the production of new evidence — yet it appeared to the judges so strong a measure to refuse evidence, whilst any, even formal appearance remained, that the trial was not closed, that they sent a judge from the bench into the common pleas to obtain the opinion of their brethren there before they could venture to take upon them to consider the time for production of evidence as elapsed. The case of refusal, taken with its circumstances, is full as strong an example in favour of the report of the judges in Lord Strafforde's case, as any precedent of admittance can be.

The researches of your committee not having furnished them with any cases in which evidence has been rejected during the trial, as being out of time, we have found some instances in which it has been actually received; and received not to repel any new matter in the prisoner's defence — but when the prisoner had called all his witnesses, and thereby closed his defence. A remarkable instance occurred, on the trial of Harrison for the murder of Dr. Clenche *. The justices who tried the cause (viz.) Lord Chief Justice Holt, and the Justices Atkins and Nevil, admitted the prosecutor to call new evidence, for no other reason but that a new witness was then come into court, who had not been in court before. — These justices apparently were of the same opinion on this point with the justices who gave their opinion in the case of Lord Strafforde.

Your committee on this point, as on the former, cannot discover any authority for the decision of the House of Lords in the law of parliament, or in the law practice of any court in this kingdom.

* State Trials, Vol. iv. p. 501.

Practice Below.

Your committee not having learned that the resolutions of the judges (by which the lords have been guided) were supported by any authority in law to which they could have access, have heard by rumour, that they have been justified upon the practice of the courts, in ordinary trials by commission of oyer and terminer.

To give any legal precision to this term of *practice*, as thus applied, your committee apprehends it must mean — that the judge in those criminal trials has so regularly rejected a certain kind of evidence when offered there, that it is to be regarded in the light of a case frequently determined by legal authority. If such had been discovered, though your committee never could have allowed these precedents as rules for the guidance of the high court of parliament, yet they should not be surprized to see the inferior judges forming their opinions on their own confined practice.

Your committee, in their inquiry, has found comparatively few reports of criminal trials, except the collection under the title of State Trials, a book compiled from materials of very various authority; and in none of those which we have seen is there, as appears to us, a single example of the rejection of evidence, similar to that rejected by the advice of the judges in the House of Lords. Neither, if such examples did exist, could your committee allow them to apply directly and necessarily as a measure of reason to the proceedings of a court constituted so very differently from those in which the common law is administered.

In the trials below, the judges decide on the competency of the evidence before it goes to the jury, and (under the correctives in the use of their discretion stated before in this report) with great propriety and wisdom. Juries are taken promiscuously from the mass of the people; they are composed of men who in many instances, in most perhaps,

never were concerned in any causes, judicially or otherwise, before the time of their service. They have generally no previous preparation or possible knowledge of the matters to be tried, or what is applicable or inapplicable to them, and they decide in a space of time too short for any nice or critical disquisition. The judges, therefore, of necessity must forestall the evidence where there is a doubt on its competence, and indeed observe much on its credibility, or the most dreadful consequences might follow. — The institution of juries, if not thus qualified, could not exist. Lord Mansfield makes the same observation with regard to another corrective of the short mode of trial — that of a *new trial.*

This is the law, and this its policy. The jury are not to decide on the competency of witnesses, or of any other kind of evidence, in any way whatsoever. Nothing of that kind can come before them. But the lords in the high court of parliament are not, either actually or virtually, a jury. No legal power is interposed between them and evidence; they are themselves by law fully and exclusively equal to it. They are persons of high rank, generally of the best education, and of sufficient knowledge of the world; and they are a permanent, a settled, a corporate, and not an occasional and transitory judicature. But it is to be feared, that the authority of the judges (in the case of juries legal) may, from that example, weigh with the lords further than its reason, or its applicability to the judicial capacity of the peers, can support. It is to be feared, that if the lords should think themselves bound implicitly to submit to this authority, that at length they may come to think themselves to be no better than jurors, and may virtually consent to a partition of that judicature, which the law has left to them whole, supreme, uncontrouled, and final.

This final and independent judicature, because it is final and independent, ought to be very cautious with regard to the rejection of evidence. — If incompetent evidence is received by them, there is nothing to hinder their judging

upon it afterwards according to its value. It may have no weight in their judgment; but if, upon advice of others, they previously reject information necessary to their proper judgment, they have no intermediate means of setting themselves right, and they injure the cause of justice without any remedy. Against errors of juries there is remedy by a new trial. Against errors of judges, there is remedy, in civil causes, by demurrer and bills of exceptions; against their final mistake, there is remedy by writ of error, in courts of common law. In chancery, there is a remedy by appeal. If they wilfully err in the rejection of evidence, there was formerly the terror existing of punishment by impeachment of the Commons; — but with regard to the lords, there is no remedy for error, no punishment for a wilful wrong.

Your committee conceives it not improbable, that this apparently total and unreserved submission of the lords to the dictates of the judges of the inferior courts (no proper judges in any light, or in any degree, of the law of parliament) may be owing to the very few causes of *original* jurisdiction, and the great multitude of those of *appellate* jurisdiction which come before them. In cases of appeal, or of error (which is in the nature of an appeal), the court of appeal is obliged to judge, not by its *own* rules, acting in another capacity, or by those which it shall choose *pro re nata* to make, but by the rules of the inferior court from whence the appeal comes, for the fault or the mistake of the inferior judge is, that he has not proceeded as he ought to do, according to the law which he was to administer; and the correction, if such shall take place, is to compel the court from whence the appeal comes, to act as originally it ought to have acted according to law, as the law ought to have been understood and practised in that tribunal.

The lords, in such cases of necessity, judge on the grounds of the law and practice of the courts below; and this they can very rarely learn with precision, but from the body of the judges. Of course much deference is, and ought to be had to their opinions. But by this means a

confusion may arise (if not well guarded against) between what they do in their *appellate* jurisdiction which is frequent, and what they ought to do in their *original* jurisdiction, which is rare; and by this the whole original jurisdiction of the peers, and the whole law and usage of parliament, at least in their virtue and spirit, may be considerably impaired.

After having thus submitted to the House the general tenor of the proceedings in this trial, your committee will, with all convenient speed, lay before the House the proceedings on each head of evidence separately, which has been rejected; and this they hope will put the House more perfectly in possession of the principal causes of the length of this trial, as well as of the injury which parliamentary justice may, in their opinion, suffer from those proceedings.

APPENDIX, No. I.

In the Case of EARL FERRERS.

*April 17th, 1760.**

THE House of Peers unanimously found Earl Ferrers guilty of the felony and murder whereof he stood indicted; and the earl being brought to the bar, the high steward acquainted him therewith; and the House immediately adjourned to the chamber of parliament: and having put the following question to the judges, adjourned to the next day:

"Supposing a peer, so indicted and convicted, ought by law to receive such judgment as aforesaid, and the day appointed by the judgment for execution should lapse before such execution done, whether a new time may be appointed for the execution, and by whom?"

On the 18th, the House then sitting in the chamber of parliament, the lord chief baron, in the absence of the chief justice

* Foster's Crown Law, p. 138. Fo. edit.

of the common pleas, delivered in writing the opinion of the judges, which they had agreed on and reduced into form that morning.

His lordship added many weighty reasons in support of the opinion; which he urged with great strength and propriety, and delivered with a becoming dignity.

To the Second Question.

"Supposing the day appointed by the judgment for execution should lapse before such execution done (which however the law will not presume), we are all of opinion, that a new time may be appointed for the execution, either by the high court of parliament, before which such peer shall have been attainted, or by the court of king's bench, the parliament not then sitting; the record of the attainder being properly removed into that court."

The reasons upon which the judges founded their answer to the question relating to the further proceedings of the House after the high steward's commission dissolved, which is usually done upon pronouncing judgment, may possibly require some further discussion. I will, therefore, before I conclude, mention those which weighed with me, and, I believe, with many others of the judges.

Reasons, &c.

Every proceeding in the House of Peers acting in its judicial capacity, whether upon writ of error, impeachment, or indictment, removed thither by *certiorari*, is in judgment of law a proceeding before the king in parliament: and therefore the House, in all those cases, may not improperly be styled, the court of our lord the king in parliament.

This court is founded upon immemorial usage, upon the law and custom of parliament, and is part of the original system of our constitution.

It is open for all the purposes of judicature during the continuance of the parliament: it openeth at the beginning and shutteth at the end of every session; just as the court of king's bench, which is likewise in judgment of law held before the king himself, openeth and shutteth with the term.

The authority of this court, or, if I may use the expression,

its constant activity for the ends of public justice, independent of any special powers derived from the crown, is not doubted in the case of writs of error from those courts of law whence error lieth in parliament, and of impeachments for misdemeanors.

It was formerly doubted, whether, in the case of an impeachment for treason, and in the case of an indictment against a peer for any capital crime, removed into parliament by *certiorari*, whether in these cases the court can proceed to trial and judgment without an high steward, appointed by special commission from the crown.

This doubt seemeth to have arisen from the not distinguishing between a proceeding in the court of the high steward, and that before the king in parliament. The name, style, and title of office is the same in both cases; but the office, the powers, and preheminencies annexed to it, differ very widely; and so doth the constitution of the courts where the offices are executed. The identity of the name may have confounded our ideas, as equivocal words often do, if the nature of things is not attended to; but the nature of the offices, properly stated, will I hope remove every doubt on these points.

In the court of the high steward, he alone is judge in all points of law and practice; the peers triers are merely judges of fact, and are summoned by virtue of a precept from the high steward, to appear before him on the day appointed by him for the trial, *ut rei veritas melius sciri poterit.*

The high steward's commission, after reciting that an indictment hath been found against the peer by the grand jury of the proper county, impowereth him to send for the indictment, to convene the prisoner before him, at such day and place as he shall appoint, then and there to hear and determine the matter of such indictment; to cause the peers triers *tot & tales, per quos rei veritas melius sciri poterit*, at the same day and place to appear before him, *veritateque inde compertâ*, to proceed to judgment according to the law and custom of England, and thereupon to award execution. *

By this it is plain that the sole right of judicature is in cases of this kind vested in the high steward; that it resideth

* See Lord Clarendon's commission as high steward, and the writs and precepts preparatory to the trial, in Lord Morley's case. vii. St. Tri.

solely in his person; and consequently without this commission, which is but in nature of a commission of oyer and terminer, no one step can be taken in order to a trial; and that when his commission is dissolved, which he declareth by breaking his staff, the court no longer existeth.

But in a trial of a peer in full parliament, or to speak with legal precision, before the king in parliament, for a capital offence, whether upon impeachment or indictment, the case is quite otherwise; every peer present at the trial, and every temporal peer, hath a right to be present in every part of the proceeding; voteth upon every question of law and fact; and the question is carried by the major vote, the high steward himself voting merely as a peer and member of that court, in common with the rest of the peers, and in no other right.

It hath indeed been usual, and very expedient it is, in point of order and regularity, and for the solemnity of the proceeding, to appoint an officer for presiding during the time of the trial, and until judgment, and to give him the style and title of Steward of England; but this maketh no sort of alteration in the constitution of the court; it is the same court, founded in immemorial usage, in the law and custom of parliament, whether such appointment be made or not.

It acteth in its judicial capacity in every order made touching the time and place of the trial, the postponing the trial from time to time upon petition, according to the nature and circumstances of the case, the allowance or non-allowance of council to the prisoner, and other matters relative to the trial*; and all this before an high steward hath been appointed. And so little was it apprehended, in some cases which I shall mention presently, that the existence of the court depended on the appointment of an high steward, that the court itself directed in what manner, and by what form of words, he should be appointed. It hath likewise received and recorded the prisoner's confession, which amounteth to a conviction, before the appointment of an high steward; and hath allowed to prisoners the benefit of acts of general pardon, where they appeared entitled to it, as well without the appointment of an high steward, as after his commission dissolved.

And when, in the case of impeachments, the Commons have

* See the orders previous to the trial, in the cases of Lords Kilmarnock, &c. and Lord Lovat, and many other modern cases.

sometimes, at conferences between the Houses, attempted to interpose in matters preparatory to the trial, the general answer hath been, "This is a point of judicature upon which the Lords will not confer; they impose silence upon themselves," or to that effect. I need not here cite instances; every man who hath consulted the journals of either House hath met with many of them.

I will now cite a few cases, applicable, in my opinion, to the present question. And I shall confine myself to such as have happened since the Restoration. Because, in questions of this kind, modern cases, settled with deliberation, and upon a view of former precedents, give more light and satisfaction than the deepest search into antiquity can afford. And also because the prerogatives of the crown, the privileges of parliament, and the rights of the subject in general, appear to me to have been more studied, and better understood, at and for some years before that period, than in former ages.

In the case of the Earl of Danby, and the popish lords then under impeachments, the Lords, on the 6th of May 1679, appointed time and place for hearing the Earl of Danby, by his counsel, upon the validity of his plea of pardon, and for the trials of the other Lords; and voted an address to his majesty, praying that he would be pleased to appoint an high steward for those purposes.

These votes were, on the next day, communicated to the Commons by message in the usual manner.

On the 8th, at a conference between the Houses, upon the subject-matter of that message, the Commons expressed themselves to the following effect: "They cannot apprehend what should induce your Lordships to address his majesty for an high steward, for determining the validity of the pardon which hath been pleaded by the Earl of Danby, as also for the trial of the other five lords, because they conceive the constituting an high steward is not necessary, but that judgment may be given in parliament upon impeachment without an high steward;" and concluded with a proposition, that for avoiding any interruption or delay, a committee of both Houses might be nominated to consider of the most proper ways and methods of proceeding.

This proposition the House of Peers, after a long debate, rejected.

Dissentientibus, Finch *, chancellor, and many other Lords.

However, on the 11th the Commons' proposition of the 8th was, upon a second debate, agreed to; and the lord chancellor, lord president, and ten other Lords, were named of the committee, to meet and confer with a committee of the Commons.

The next day the lord president reported, that the committees of both Houses met that morning, and made an entrance into the business referred to them: that the Commons desired to see the commissions that are prepared for an high steward at these trials, and also the commissions in the Lord Pembroke's and the Lord Morley's cases.

That to this the Lords' committees said, "*The high steward is but speaker* pro tempore, *and giveth his vote as well as the other Lords. This changeth not the nature of the court.* And the Lords declared they have power enough to proceed to trial, though the king should not name an high steward. †

"That this seemed to be a satisfaction to the Commons, provided it was entered in the Lords' Journals, which are records."

Accordingly on the same day, "*It is declared and ordered, by the Lords spiritual and temporal in parliament assembled, that the office of an high steward upon trials of peers upon impeachments is not necessary to the House of Peers; but that the Lords may proceed in such trials if an high steward be not appointed, according to their humble desire.* ‡

On the 13th the lord president reported, that the committees of both Houses had met that morning, and discoursed in the first place on the matter of a lord high steward, and had perused former commissions for the office of high steward; and

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* Afterwards Earl of Nottingham.

† In the Commons' Journal of the 15th of May it standeth thus: Their lordships further declare to the committee, that a lord high steward was made *hac vice* only. That notwithstanding the making of a lord high steward the court remained the same, and was not thereby altered, but still remained the court of peers in parliament. That the lord high steward was but a speaker or chairman, for the more orderly proceeding at the trials.

‡ This resolution my lord chief baron referred to and cited in his argument upon the second question proposed to the judges, which is before stated.

then, putting the House in mind of the order and resolution of the preceding day, proposed from the committees that a new commission might issue, so as the words in the commission may be thus changed, viz. Instead of *Ac pro eo quòd officium seneschalli Angliæ (cujus presentia in hac parte requiritur) utaccepimus jam vacat,* may be inserted, *Ac pro eo quòd proceres & magnates in parliamento nostro assemblati, nobis humiliter supplicaverunt ut seneschallum Angliæ pro hac vice constituere dignaremur;* to which the House agreed. *

It must be admitted, that precedents drawn from times of ferment and jealousy, as these were, lose much of their weight, since passion and party prejudice generally mingle in the contest; yet let it be remembered, that these are resolutions in which both Houses concurred, and in which the rights of both were thought to be very nearly concerned; the Commons' right of impeaching with effect, and the whole judicature of the Lords in capital cases. For if the appointment of an high steward was admitted to be of absolute necessity, (however necessary it may be for the regularity and solemnity of the proceeding during the trial, and until judgment, which I do not dispute,) every impeachment may, for a reason too obvious to be mentioned, be rendered ineffectual. And the judicature of the Lords, in all capital cases, nugatory.

It was from a jealousy of this kind, not at that juncture altogether groundless, and to guard against every thing from whence the necessity of an high steward in the case of an impeachment might be inferred, that the Commons proposed, and the Lords readily agreed to, the amendment in the steward's commission, which I have already stated. And it hath, I confess, great weight with me, that this amendment, which was at the same time directed in the cases of the five popish lords, when commissions should pass for their trials, hath taken place in every commission upon impeachments for treason since that

* This amendment arose from an exception taken to the commission by the committee for the Commons, which as it then stood did in their opinion imply that the constituting of a lord high steward was necessary. Whereupon it was agreed by the whole committee of Lords and Commons, that the commission should be recalled, and a new commission, according to the said amendment, issue, to bear date after the order and resolution of the 12th (Commons' Journal of the 15th of May).

time*. And I cannot help remarking, that in the case of Lord Lovat, when neither the heat of the times, nor the jealousy of parties, had any share in the proceeding, the House ordered, "That the commission for appointing a lord high steward shall be in the like form as that for the trial of the Lord Viscount Stafford, as entered in the journal of this House, on the 30th of November 1680, except that the same shall be in the English language." †

I will make a short observation on this matter.

The order, on the 13th of May 1679, for varying the form of the commission, was, as appeareth by the journal, plainly made in consequence of the resolution of the 12th, and was founded on it; and consequently the constant unvarying practice with regard to the new form goeth, in my opinion, a great way towards shewing, that in the sense of all succeeding times, that resolution was not the result of faction, or a blameable jealousy, but was founded in sound reason and true policy.

It may be objected, that the resolution of the 12th of May 1679 goeth no further than to a proceeding upon impeachment.

The letter of the resolution, it is admitted, goeth no further; but this is easily accounted for: a proceeding by impeachment was the subject-matter of the conference, and the Commons had no pretence to interpose in any other. But what say the Lords? The high steward is but as a speaker or chairman, *pro tempore*, for the more orderly proceeding at the trials; the appointment of him doth not alter the nature of the court, which still remaineth the court of the Peers in parliament. From these premises they draw the conclusion I have mentioned. Are not these premises equally true in the case of a proceeding upon indictment? — They undoubtedly are.

It must likewise be admitted, that in the proceeding upon indictment the high steward's commission hath never varied from the ancient form in such cases; the words objected to by the Commons, *Ac pro eo quòd officium seneschalli Angliæ (cujus præsentia in hac parte requiritur) ut accepimus jam vacat*, are still

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* See, in the state trials, the commissions in the cases of the Earl of Oxford, Earl of Derwentwater, and others — Lord Winton and Lord Lovat.

† See the proceedings, printed by order of the House of Lords (4th February 1746).

retained. But this proveth no more than that the great seal having no authority to vary in point of form, hath from time to time very prudently followed ancient precedents.

I have already stated the substance of the commission, in a proceeding in the court of the high steward. I will now state the substance of that in a proceeding in the court of the peers in parliament. And shall make use of that in the case of the Earl of Kilmarnock and others, as being the latest, and, in point of form, agreeing with the former precedents.

The commission, after reciting that William Earl of Kilmarnock, &c. stand indicted before commissioners of gaol delivery, in the county of Surrey, for high treason in levying war against the king; and that the king intendeth that the said William Earl of Kilmarnock, &c. shall be heard, examined, sentenced, and adjudged before himself in this present parliament, touching the said treason, and for that the office of steward of Great Britain (whose presence is required upon this occasion) is now vacant as we are informed, appointeth the then lord chancellor steward of Great Britain, to bear, execute, and exercise (for this time) the said office, with all things due and belonging to the same office, in that behalf.

What, therefore, are the things due and belonging to the office in a case of this kind? Not, as in the court of the high steward, a right of judicature. For the commission itself supposeth that right to reside in a court then subsisting before the king in parliament. The parties are to be there heard, sentenced, and adjudged. What share in the proceeding doth the high steward then take? By the practice and usage of the court of the Peers in parliament, he giveth his vote as a member thereof with the rest of the Peers; but for the sake of regularity and order, he presideth, during the trial, and until judgment, as chairman, or speaker, *pro tempore*. In that respect, therefore, it may be properly enough said, that his presence is required during the trial, and until judgment, and in no other. Herein I see no difference between the case of an impeachment, and of an indictment.

I say during the time of the trial, and until judgment, because the court hath, as I observed before, from time to time, done various acts, plainly judicial, before the appointment of an high steward, and where no high steward hath ever been appointed, and even after the commission dissolved.

I will to this purpose cite a few cases.

I begin with the latest, because they are the latest, and were ruled with great deliberation, and for the most part upon a view of former precedents.

In the case of the Earl of Kilmarnock and others, the Lords, on the 24th of June 1746, ordered, that a writ or writs of *certiorari* be issued for removing the indictments before the House. And on the 26th the writ, which is made returnable before the king in parliament, with the return and indictments, was received and read. On the next day, upon the report of the Lords' committees, that they had been attended by the two chief justices, and chief baron, and had heard them touching the construction of the act of the seventh and eighth of King William, "For regulating trials in cases of high treason, and misprision of treason," the House, upon reading the report, came to several resolutions, founded for the most part on the construction of that act. What that construction was, appeareth from the lord high steward's address to the prisoners, just before their arraignment. Having mentioned that act, as one happy consequence of the Revolution, he addeth, "However injuriously that revolution hath been traduced, whatever attempts have been made to subvert this happy establishment founded on it, your Lordships will now have the benefit of that law in its full extent."

I need not after this mention any other judicial acts done by the House in this case, before the appointment of the high steward — many there are. For, the putting a construction upon an act relative to the conduct of the court, and the right of the subject at the trial, and in the proceedings preparatory to it, and this in a case entirely new, and upon a point, to say no more in this place, not extremely clear, was undoubtedly an exercise of authority proper only for a court having full cognizance of the cause.

I will not minutely enumerate the several orders made preparatory to the trial of Lord Lovat, and in the several cases I shall have occasion to mention, touching the time and place of the trial, the allowance or non-allowance of counsel, and other matters of the like kind, all plainly judicial, because the like orders occur in all the cases where a journal of the preparatory steps hath been published by order of the Peers. With regard to Lord Lovat's case, I think the order directing the form of

the high steward's commission, which I have already taken notice of, is not very consistent with the idea of a court, whose powers can be supposed to depend, at any point of time, upon the existence or dissolution of that commission.

In the case of the Earl of Derwentwater, and the other Lords impeached at the same time, the House received and recorded the confessions of those of them who pleaded guilty, long before the test of the high steward's commission, which issued merely for the solemnity of giving judgment against them upon their conviction.

This appeareth by the commission itself: it reciteth that the Earl of Derwentwater, and others, *Coram nobis in præsenti parliamento*, had been impeached by the Commons for high treason, and had, *Coram nobis in præsenti parliamento*, pleaded guilty to that impeachment; and that the king, intending that the said Earl of Derwentwater and others, *de & pro proditione unde ipsi ut præfertur impetit', accusit', & convict' existunt coram nobis in præsenti parliamento, secundem legem & consuetudinem hujus regni nostri Magnæ Britanniæ, audientur, sententientur, & adjudicentur*, constituteth the then lord chancellor high steward (*hac vice*) to do and execute all things which to the office of high steward in that behalf do belong.

The receiving and recording the confession of the prisoners, which amounted to a conviction, so that nothing remained but proceeding to judgment, was certainly an exercise of judicial authority, which no assembly, how great soever, not having full cognizance of the cause, could exercise.

In the case of Lord Salisbury *, who had been impeached by the Commons for high treason, the Lords, upon his petition, allowed him the benefit of the act of general pardon passed in the second year of William and Mary, so far as to discharge him from his imprisonment upon a construction they put upon that act, no high steward ever having been appointed in that case.

On the 2d of October 1690, upon reading the Earl's petition, setting forth, that he had been a prisoner for a year and nine months, in the Tower, notwithstanding the late act of free and general pardon, and praying to be discharged, the

* See the Journals of the Lords.

Lords ordered the judges to attend on the Monday following, to give their opinions, whether the said Earl be pardoned by the act. On the 6th the judges delivered their opinions, that if his offence was committed before the 13th of February 1688, and not in Ireland, or beyond the seas, he is pardoned. Whereupon it was ordered, that he be admitted to bail, and the next day he and his sureties entered into a recognizance of bail, himself in 10,000*l.* and two sureties in 5,000*l.* each; and on the 30th he and his sureties were, after a long debate, discharged from their recognizance.

It will not be material to inquire, whether the House did right in discharging the Earl without giving the Commons an opportunity of being heard; since, in fact, they claimed and exercised a right of judicature without an high steward—which is the only use I make of this case.

They did the same in the case of the Earl of Carnwarth, the Lords Widdrington and Nairn, long after the high steward's commission dissolved.

These lords had judgment passed on them at the same time that judgment was given against the Lords Derwentwater, Nithsdale, and Kenmure; and judgment being given, the high steward immediately broke his staff, and declared the commission dissolved. They continued prisoners in the Tower under reprieves, till the passing of the act of general pardon, in the third of King George the First.

On the 21st of November 1717*, the House being informed that these lords had severally entered into recognizances before one of the judges of the court of king's bench, for their appearance in the House in this sessions of parliament; and that the Lords Carnwarth and Widdrington were attending accordingly; and that the Lord Nairn was ill at Bath, and could not then attend; the Lords Carnwarth and Widdrington were called in; and severally, at the bar, prayed that their appearance might be recorded; and likewise prayed the benefit of the act for his majesty's general and free pardon. †

Whereupon the House ordered that their appearance be recorded, and that they attend again to-morrow, in order to plead the pardon. And the recognizance of the Lord Nairn was respited till that day fortnight.

* Lords' Journals † 3 G. I. c. 19.

On the morrow the Lords Carnwarth and Widdrington, then attending, were called in; and the lord chancellor acquainted them severally, that it appeared by the records of the House, that they severally stood attainted of high treason; and asked them severally, what they had to say, why they should not be remanded to the Tower of London?

Thereupon they severally, upon their knees, prayed the benefit of the act, and that they might have their lives and liberty pursuant thereunto.

And the attorney-general, who then attended for that purpose, declaring that he had no objection, on his majesty's behalf, to what was prayed, conceiving that those Lords, not having made any escape since their conviction, were entitled to the benefit of the act*; the House, after reading the clause in the act relating to that matter, agreed that they should be allowed the benefit of the pardon, as to their lives and liberties; and discharged their recognizances, and gave them leave to depart without further day given for their appearance.

On the 6th of December following the like proceedings were had, and the like orders made, in the case of Lord Nairn.

I observe that the lord chancellor did not ask these lords what they had to say why execution should not be awarded. There was, it is probable, some little delicacy as to that point. But since the allowance of the benefit of the act, as to life and liberty, which was all that was prayed, was an effectual bar to any future imprisonment on that account, and also to execution, and might have been pleaded as such in any court whatsoever; the whole proceeding must be admitted to have been in a court having complete jurisdiction in the case, notwithstanding the high steward's commission had been long dissolved —which is all the use I intended to make of this case.

I will not recapitulate; the cases I have cited, and the conclusions drawn from them, are brought into a very narrow compass. I will only add, it would sound extremely harsh to say, that a court of criminal jurisdiction, founded in immemorial usage, and held in judgment of law before the king himself, can in any event whatever be under an utter incapacity of proceeding to trial and judgment, either of condemnation or

* See sect. 45. of the 3 G. I.

acquittal, the ultimate objects of every criminal proceeding, without certain supplemental powers derived from the crown.

These cases, with the observations I have made on them, I hope sufficiently warrant the opinion of the judges upon that part of the second question in the case of the late Earl Ferrers, which I have already mentioned. And also what was advanced by the lord chief baron in his argument on that question, "That though the office of high steward should happen to determine before execution done according to the judgment, yet the court of the Peers in parliament, where that judgment was given, would subsist for all the purposes of justice during the sitting of the parliament." And consequently that in the case supposed by the question, that court might appoint a new day for the execution.

Appendix, No. 2.

QUESTIONS referred by the Lords to the judges, in the impeachment of Warren Hastings, Esquire; and the ANSWERS of the judges. — Extracted from the Lords' Journals and Minutes.

1st.

Question. — Whether, when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answer he had so made? 1788, Febry. 29. Pa. 418.

Answer. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges, upon the question of law put to them on Friday the 29th of February last, as follows — "That when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it is not competent for such

prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a committee of the House of Commons, or in any other place; and by demanding of him whether the particulars so suggested were not the answer he had so made:" 1788, April 10. Pa. 592.

2d.

QUESTION.— Whether it be competent for the managers to produce an examination taken without oath by the rest of the council, in the absence of Mr. Hastings the governor-general, charging Mr. Hastings with corruptly receiving three lacks 54,105 rupees, which examination came to his knowledge, and was by him transmitted to the court of directors as a proceeding of the said counsellors, in order to introduce the proof of his demeanor thereupon;— it being alleged by the managers for the Commons, that he took no steps to clear himself, in the opinion of the said directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said counsellors of his servant Cantoo Baboo?

1789, May 14. Pa. 677.

ANSWER.— The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges, upon the said question, in the negative — and gave his reasons.

1789, May 20. Pa. 718.

3d.

QUESTION.—Whether the instructions from the court of directors of the United Company of Merchants of England trading to the East Indies, to Warren Hastings, Esquire, Governor-general; Lieutenant-general John Clavering, the Honourable George Monson, Richard Barwell, Esquire, and Philip Francis, Esquire, counsellors, constituted and appointed the governor-general and council of the said United Company's presidency of Fort William in Bengal, by an act of parliament passed in the last session, intituled, "An act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe;" of the 29th of March 1774, par. 31, 32. and 35.; the consultation of the 11th of March 1775; the consultation of the 13th of March 1775,

up to the time that Mr. Hastings left the council; the consultation of the 20th of March 1775; the letter written by Mr. Hastings to the court of directors on the 25th of March 1775 — it being alleged that Mr. Hastings took no steps to explain or defend his conduct — are sufficient to introduce the examination of Nundcomar, or the proceedings of the rest of the counsellors on said 13th of March, after Mr. Hastings left the council, such examination and proceedings charging Mr. Hastings with corruptly receiving three lacks 54,105 rupees?

1789, May 21. Pa. 730.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges, upon the said question, in the negative — and gave his reasons.

1789, May 27. Pa. 771.

4th.

QUESTION. — Whether the public accounts of the Nizamut and Bhela, under the seal of the Begum, attested also by the Nabob, and transmitted by Mr. Goring to the board of council at Calcutta, in a letter bearing date the 29th June 1775, received by them, recorded without objection on the part of Mr. Hastings, and transmitted by him likewise without objection to the court of directors, and alleged to contain accounts of money received by Mr. Hastings; and it being in proof that Mr. Hastings, on the 11th of May 1778, moved the board to comply with the requisitions of the nabob Mobarek ul Dowla, to reappoint the munny Begum, and rajah Goordass (who made up those accounts) to the respective offices they before filled — and which was accordingly resolved by the board — ought to be read?

1789, June 17. Pa. 855.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges, upon the said question, in the negative — and gave his reasons.

1789, June 24. Pa. 922.

5th.

QUESTION. — Whether the paper delivered by Sir Elijah Impey, on the 7th of July 1775, in the supreme court, to the secretary of the supreme council, in order to be transmitted

to the council as the resolution of the court in respect to the claim made for Roy Radaclrurn, on account of his being vakeel of the nabob Mobarek ul Dowlah — and which paper was the subject of the deliberation of the council on the 31st July 1775, Mr. Hastings being then present, and was by them transmitted to the court of directors, as a ground for such instructions from the court of directors as the occasion might seem to require — may be admitted as evidence of the actual state and situation of the nabob, with reference to the English government? 1789, July 2. Pa. 1001.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges, upon the said question, in the affirmative — and gave his reasons.
1789, July 7. Pa. 1030.

6th.

QUESTION. — Whether it be or be not competent to the managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge, to Kelleram, fell into arrear and was deficient — and whether, if proof were offered that the rent fell in arrear immediately after the letting, the evidence would in that case be competent? 1790, April 22.. Pa. 364.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges, upon the said question — "That it is not competent to the managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge to Kelleram, fell into arrear, and was deficient" — and gave his reasons. 1790, April 27. Pa. 388.

7th.

QUESTION. — Whether it be competent for the managers for the Commons to put the following question to the witness, upon the sixth article of charge, viz. "What impression the

letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitants of that country?"

1790, April 27. Pa. 391.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges upon the said question — "That it is not competent to the managers for the Commons to put the following question to the witness, upon the sixth article of charge, viz. What impression the letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitans of that country" — and gave his reasons. 1790, April 29. Pa. 413.

8th.

QUESTION. — Whether it be competent to the managers for the Commons to put the following question to the witness, upon the seventh article of charge, viz. "Whether more oppressions did actually exist under the new institution than the old?"

1790, April 29. Pa. 415.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges upon the said question — "That it is not competent to the managers for the Commons to put the following question to the witness, upon the seventh article of charge, viz. Whether more oppressions did actually exist under the new institution than under the old" — and gave his reasons. 1790, May 4. Pa. 428.

9th.

QUESTION. — Whether the letter of the 13th of April 1781, can be given in evidence by the managers for the Commons, to prove that the letter of the 5th of May 1781, already given in evidence, relative to the abolition of the provincial council, and the subsequent appointment of the committee of revenue, was false in any other particular than that which is charged in the 7th article of charge? 1790, May 20. Pa. 557.

ANSWER. — The lord chief baron of the court of exchequer delivered the unanimous opinion of the judges upon the said

question—"That it is not competent for the managers on the part of the Commons to give any evidence on the seventh article of impeachment, to prove that the letter of the 5th of May 1781 is false in any other particular than that wherein it is expressly charged to be false"—and gave his reasons.

1790, June 2. Pa. 634.

10th.

QUESTION.—Whether it be competent to the managers for the Commons to examine the witness, to any account of the debate which was had on the 9th day of July 1778, previous to the written minutes that appear upon the consultation of that date?

1794, Feb. 25. Lords' Minutes.

ANSWER.—The lord chief justice of the court of common pleas delivered the unanimous opinion of the judges upon the said question—"That it is not competent to the managers for the Commons to examine the witness, Philip Francis, Esq. to any account of the debate which was had on the 9th day of July 1778, previous to the written minutes that appear upon the consultation of that date"—and gave his reasons.

1794, Feb. 27. Lords' Minutes.

11th.

QUESTION.—Whether it is competent for the managers for the Commons, in reply, to ask the witness, whether, between the time of the original demand being made upon Cheit Sing, and the period of the witness's leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheit Sing—the same not being relative to any matter originally given in evidence by the defendant?

1794, Feb. 27. Lords' Minutes.

ANSWER.—The lord chief justice of the court of common pleas delivered the unanimous opinion of the judges upon the said question—"That it is not competent for the managers for the Commons to ask the witness, whether, between the time of the original demand being made upon Cheit Sing and the period of his leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheit Sing, the same

not being relative to any matter originally given in evidence by the defendant" — and gave his reasons.

1794, March 1. Lords' Minutes.

12th.

QUESTION. — Whether a paper read in the court of directors, on the 4th of November 1783, and then referred by them to the consideration of the committee of the whole court; and again read in the court of directors on the 19th of November 1783, and amended, and ordered by them to be published for the information of the proprietors, can be received in evidence, in reply, to rebut the evidence given by the defendant, of the thanks of the court of directors, signified to him on the 28th of June 1785. 1794, March 1. Lords' Minutes.

ANSWER. — Whereupon the lord chief justice of the court of common pleas, having conferred with the rest of the judges present, delivered their unanimous opinion, upon the said question, in the negative — and gave his reasons.

1794, March 1. Lords' Minutes.

May 23.

THE preceding Report of the committee of managers was ordered to be printed for the use of the members of the House of Commons, and was shortly after reprinted and published in the shape of a pamphlet by Mr. Debrett of Piccadilly. In consequence of which, in the course of a debate which took place in the House of Lords, on Thursday the 22d of May, on the treason and sedition bills, Lord Thurlow took occasion to mention "a pamphlet which his lordship said was published by one Debrett in Piccadilly, and which had that day been put into his hands, reflecting highly upon the judges and many members of that House: it was disgraceful and indecent; such as he thought never ought to pass unpunished. He considered that vilifying and misrepresenting the conduct of judges and magistrates entrusted with the administration of justice and the laws of the country, was a crime of a very heinous nature, most destructive in its consequences, because it tended to lower them

in the opinion of those who ought to feel a proper reverence and respect for their high and important stations; and when it was stated to the ignorant and the wicked, that their judges and magistrates were ignorant and corrupt, it tended to lessen their respect for, and obedience to the laws of the country, because they were taught to think ill of those who administered them." On the next day Mr. Burke called the attention of the House of Commons to the above circumstance in the following speech.

Mr. BURKE said: Mr. Speaker, the licence of the present times makes it very difficult to talk upon certain subjects in which parliamentary order is involved. It is difficult to speak of them with regularity, or to be silent with dignity or wisdom. All our proceedings have been constantly published, according to the discretion and ability of individuals, with impunity, almost ever since I came into parliament. By prescription the people have obtained something like a right to this abuse. I do not justify it. The abuse is now grown so inveterate, that to punish it without a previous notice, would have an appearance of hardship, if not injustice. These publications are frequently erroneous as well as irregular, but not always so: what they give as reports and resolutions of this House, have sometimes been fairly given.

It has not been uncommon to attack the proceedings of the House itself, under colour of attacking these irregular publications; and the House, notwithstanding this colourable plea, has, in some instances, proceeded to punish the persons who have thus insulted it. When a complaint is made of a piratical edition of a work, the author admits that it is his work that is thus piratically published; and whoever attacks the work itself in these unathorized publications, does not attack it less than if he had attacked it in an edition authorized by the writer.

I understand, Sir, that in a place which I greatly respect, and by a person for whom I have likewise great respect, a pamphlet published by a Mr. Debrett, has been very heavily censured. That pamphlet, I hear, (for I have not read it,)

purports to be a Report made by one of your committees to this House. It has been censured (as I am told) by the person, and in the place I have mentioned, in very harsh and very unqualified terms. It has been said, and so far very truly, that at all times, and particularly at this time, it is necessary for the preservation of order and the execution of the law, that the characters and reputation of the judges of the courts in Westminster-hall should be kept in the highest degree of respect and reverence; and that in this pamphlet, described by the name of a libel, the characters and conduct of those judges upon a late occasion have been aspersed, as arising from ignorance or corruption.

Sir, I think it impossible, combining all the circumstances, not to suppose, that this speech does not reflect upon a report which, by an order of the committee on which I served, I had the honour of presenting to this House. For any thing improper in that report I am responsible, as well as the other members of the committee, to this House, and to this House only. The matters contained in it, and the observations upon them, are submitted to the wisdom of the House, that you may act upon both in the time and manner that to your judgment may seem most expedient, or that you may not act upon them at all, if you should think it most useful to the public good. Your committee has obeyed your orders; it has done its duty in making that report. I am of opinion, with the eminent person by whom that report is censured, that it is necessary, at this time very particularly, to preserve the authority of the judges. This, however, does not depend on us, but upon themselves. It is necessary to preserve the dignity and respect of all the constitutional authorities. This, too, depends upon ourselves. It is necessary to preserve the respect due to the House of Lords: it is full as necesary to preserve the respect due to the House of Commons; upon which (whatever may be thought of us by some persons) the weight and force of all other authorities within this kingdom essentially depend. If the power of the House of Commons is degraded or enervated, no other can stand. We must be

true to ourselves; we ought to animadvert upon any of our members who abuse the trust we place in them: we must support those who, without regard to consequences, perform their duty.

For your committee of managers, and for myself, I must say, that the Report was deliberately made, and does not, as I conceive, contain any very material error, nor any undue or indecent reflection upon any person. It does not accuse the judges of ignorance or corruption. Whatever it says, it does not say calumniously. This kind of language belongs to persons whose eloquence entitles them to a free use of epithets. The Report states, that the judges had given their opinions secretly, contrary to the almost uninterrupted tenor of parliamentary usage on such occasions. It states, that the opinions were given, not upon the law, but upon the case. It states, that the mode of giving the opinions were unprecedented, and contrary to the privileges of the House of Commons. It states, that the committee did not know upon what rules and principles the judges had decided upon those cases, as they neither heard them, nor are they entered upon the Journals. It is very true, that we were and are extremely dissatisfied with those opinions, and the consequent determinations of the Lords; and we do not think such a mode of proceeding at all justified by the most numerous, and the best precedents. None of these sentiments are the committee, as I conceive, (and I full as little as any of them,) disposed to retract, or to soften in the smallest degree.

The Report speaks for itself. Whenever an occasion shall be regularly given to maintain every thing of substance in that paper, I shall be ready to meet the proudest name, for ability, learning, or rank, that this kingdom contains, upon that subject. Do I say this from any confidence in myself? Far from it! It is from my confidence in our cause, and in the ability, the learning, and the constitutional principles, which this House contains within itself, and which, I hope, it will ever contain; and in the assistance, which it will not fail to afford to those, who

with good intention do their best to maintain the essential privileges of the House, the antient law of parliament, and the public justice of the kingdom.

No reply or observation was made on the subject by any other member.

VOTE OF THANKS TO THE MANAGERS OF THE IMPEACHMENT AGAINST MR. HASTINGS.

June 20.

THIS day, on the motion of Mr. Pitt, the House resolved, "That the thanks of this House be given to the members, who were appointed the managers of the impeachment against Warren Hastings, Esq. for their faithful management in their discharge of the trust reposed in them." The Speaker having given them the thanks of the House accordingly,

Mr. BURKE said, that by the orders of the House, when the thanks were given, he and his brother managers were tongue-tyed, and had no means whereby to express their gratitude but by their submission to those orders. But he thought he should be wanting in gratitude if he did not, the moment the penalty of silence was removed, seize the first opportunity to express his own satisfaction, and that of his fellow-managers, on the occasion. They had laboured to discharge their duty, they had completed the task, and they were paid by the thanks of that House, the first reward men could receive. Next to the thanks he must notice the very dignified and elegant manner in which the Speaker had discharged that task, in which he consulted not only the grandeur and dignity of that House, but at the same time politeness and attention to them. Mr.

Burke then entered into a short defence of the conduct of the impeachment. He assured the House, that no asperity of remark should provoke him to say a word; that prejudices arising from personal friendship, or from a sense of personal obligations, were too laudable for him to be discomposed at: he would only assure the House, that he had thrown no general reflections on the Company's servants, having merely repeated what Mr. Hastings himself had said of the troops serving in Oude; and it would be found by referring to the twelfth and thirteenth articles of impeachment, that the House had marked their opinion of the officers serving in Oude, in the very terms that he had used; and as for the other expressions, they had been very much misrepresented.

This was the last time that Mr. Burke ever appeared in the House of Commons. The impeachment against Mr. Hastings having been brought to a conclusion, he immediately retired from parliament, by accepting the Chiltern Hundreds.

SPEECHES

IN

WESTMINSTER-HALL,

ON THE

IMPEACHMENT

OF

WARREN HASTINGS, ESQ.

SPEECHES

IN

WESTMINSTER-HALL, &c. &c.

ON Wednesday, the 13th of February 1788, the Proceedings upon the Impeachment of Warren Hastings, Esq. commenced in Westminster-hall, with the usual formalities. The counsel who appeared for the defendant were Messrs. Law, Plumer, and Dallas. The assistant counsel for the Commons were Dr. Scott and Dr. Lawrence, Messrs. Mansfield, Pigott, Burke, and Douglas. The two first days were consumed in reading the articles of impeachment and the answers of Mr. Hastings.

THIRD DAY.

Friday, February 15. 1788.

ON the third day, the anxiety of the public to hear Mr. Burke was so great, that the galleries of the hall were full before nine o'clock. About twelve, the peers were seated to the number of one hundred and sixty-four, and proclamation being made,

Mr. BURKE addressed their lordships as follows:

My lords, the gentlemen who have it in command to support the impeachment against Mr. Hastings, late governor-general of Bengal, have directed me to open a general view of the grounds upon which the Commons have proceeded in their charge against him, to open a general view of the extent, the magnitude, the nature, the tendency, and effect of the crimes of which they have charged him;

and they have also directed me to give such explanation as I may be enabled to give of such circumstances, preceding or concomitant with the crimes with which they charge him, as may tend to explain whatever may be found obscure in the charges as they stand; and they have further commanded me and enabled me to give to your lordships such explanation of any thing in the laws, customs, and manners of the people concerned, and who are the subjects of the crimes which they charge him with, tending to remove all doubt and ambiguity. The several articles as they appear will be opened by the other gentlemen with more accuracy, and without doubt with infinitely more particularity, when they come to apply the evidence that they adduce to each charge.

This is the plan, my lords, that we mean to pursue.

My lords, I confess that in this business I come before your lordships with a considerable degree of animation, because I think it is a most auspicious circumstance, in a prosecution like this in which the honour of this kingdom and that of many nations is involved, that from the commencement of our preliminary process to the hour of this solemn trial, not the smallest difference of opinion has arisen among us. My lords, there were persons who depended on what was not to be expected from the justice of parliament, but there were persons in this kingdom who entertained hopes highly consolatory to them; there were persons who entertained hopes that the corruptions of India would have escaped during the dissentions of parliament, but they are disappointed in all the rest of their expectations which they had formed upon every thing except the merits of the cause. The Commons will not have the melancholy glory of having acted a right part in an imperfect work. What the greatest inquest of the nation has begun, its highest tribunal will accomplish. Justice will be done to India. It is true, your lordships will have your full share in this great and glorious work. We shall always consider that any honour that is divided with your lordships will be more than double to ourselves,

Notwithstanding all these encouraging pretensions, the Commons do not approach your lordships bar without some considerable degree of anxiety. I hope and trust that the magnitude and the nature of the case will reconcile that solicitude with the undoubted confidence which we repose in your lordships' justice, for we are so made, that it is not only the greatness of the interest, but the value that excites our concern in every undertaking; and I assure you (for I am authorized to say), no standard is sufficient to ascertain the value the Commons set on the case they now bring before you; for, my lords, it cannot be conceived (God forbid it could be conceived!) that the business of this day is the business of this man. It is not solely whether the prisoner at the bar be found innocent or guilty, but whether millions of mankind shall be miserable or happy. You do not decide the case only; you fix a rule. For your lordships will undoubtedly see in the course of this case, that there is not only a long connected systematic treatise of misdemeanors, but an equally connected system of maxims and principles invented to justify them, upon which your lordships must judge. It is according to the judgment you shall pronounce on the past transactions of India, connected with those principles, that the whole rule, tendency, and character of future governors in India, is to be finally decided. It will have its whole impression from the business of this hour. My lords, it is not only the subjects of this great empire that are concerned, but the credit and honour of the British nation will itself be decided by this decision. My lords, they will stand or fall thereby. We are to decide, by this gentleman, whether the crimes of individuals are to be turned into public guilt and national ignominy, or whether this nation will convert these offences, which have thrown a transient shade on its glory, into a judgment that will reflect permanent lustre on the honour, justice, and humanity of this kingdom. And there is another consideration, which is, in the judgment of the House of Commons, equal; I mean the interest of the national character—

something that, if possible, comes more home to the hearts and feelings of every Englishman, I mean the nature of our constitution itself; for the consequence and purport of an Impeachment for high crimes and misdemeanors before the Peers of this kingdom, upon a charge of the Commons, will very much be decided by your decision. For if this tribunal should be found, as I hope it will always be found, too great for trifling and petty causes; if it should at the same time be found incompetent to one of the greatest that can come before it; if the lesser from their smallness, and the greatest from their magnitude of pressure, should escape you, it is impossible the high end of this judicature can be answered.

My lords, I do not know whether it is owing to the polish of our times, less fertile in crimes, perhaps; or from a sluggish apathy; but whatever the cause is, it is now sixty-three years since any impeachment, grounded on an abuse of authority in office, has been brought forward; the last is that of Lord Macclesfield in the year 1725. So that the oldest process known to the constitution of this country is now on its revival introduced by some appearance of novelty; and at this time, when all Europe is, perhaps, in a state of great agitation, when antiquity has lost all its effect on the minds of men, and when novelty still retains its power to please, we have been very anxious in such a business so to conduct ourselves, that nothing in the revival of this great parliamentary process should afford an excuse for its future disuse. What does not stand with credit cannot stand long; and if the constitution should be deprived of this great parliamentary process — I mean not in form, but virtually — if we should be deprived of this resource, we should certainly be deprived of all its other valuable parts; because, this is the cement that binds it all together, its individuating principle, that makes England what it is; this it is, by which the magistracy, and all other things, are directed and controuled. It is by this, that statesmen, who abuse their power are tried before statesmen, and by statesmen, upon solid prin-

ciples of state policy. It is here, that those, who by abuse of power, have polluted the spirit of all laws can never hope for any protection from any of those forms: it is here, that those who have refused to conform themselves to the protection of law can never hope to escape through any of its effects. You have great and preliminary powers; you do not supersede any auxiliary jurisdiction; on the contrary, you are auxiliary to them all. Here, no part of the empire can be refused justice; here it is that we provide for that which is the great, substantial excellence of our constitution. I mean that great calculation of responsibility by which, excepting the supreme power, no man, in any condition, can escape his responsibility to the laws of his country.

My lords, interested thus — resolving to lay hold on this great security — we have (I mean the Commons) have conducted themselves with such care; without losing the spirit and zeal of a public prosecution, they have comported themselves in such prosecution with such spirit, with such temper and decorum, as would not ill become the final judgment of this court. We say that, with very few interruptions indeed, the affairs of India have constantly engaged the attention of the House of Commons more than fourteen years. We say, that we tried every method of legislative provision, before we had recourse to any thing that was a mode of punishment; we say we came forward in 1774, and passed an act of parliament for putting an end to these disorders — finding that act of parliament did not answer all the ends expected from it; finding that that act of parliament fell short of our expectations, we had, in 1782, recourse to the body of monitory resolutions. But when we found that our laws; when we found that our admonitions were despised; that enormities were increased in proportion to what was to be effected; when we found that legal authority seemed to sculk and hide its head like outlawed guilt; when we found that those who were appointed by parliament for the maintenance of the laws of this kingdom were the most forward in their opposition to them —

then it was time for the justice of the nation to exert itself. To have forborne any longer would not have been patience, but collusion, a participation of guilt. When we found ourselves in that situation, we raised heaven and earth on the occasion — we attempted every thing, in order to know whether we could find and feel our way — if possible, to avoid a painful duty without betraying a sacred trust. We found it impossible.

Having, therefore, resolved on the mode of appeal and proceeding, it was our next business to find something that was worthy of long deliberation. We have proceeded accordingly. We have proceeded with calm selection, and we have chosen such a crime, such a criminal, such a body of evidence, such a mode of process, that would have recommended this proceeding to posterity, if it had not been supported by the example of our ancestors. First, the process we use. Besides that long previous deliberation of fourteen years, when we examined every circumstance that could prove favourable to the delinquent whom we resolved to prosecute, there was no precedent to be found in the Journals favourable to him that was not applied to. This and a number of things utterly unknown to parliamentary proceedings, which seemed in some degree to favour him, were resorted to on that occasion. My lords, in the early part of the proceedings, the criminal desired to be heard. My lords, he was heard, and he produced before the bar of the House of Commons that indecent and unbecoming paper which lies on our table; deliberately given in by his own hand, and signed with his own name. But the Commons passed by every thing in that paper with a magnanimity that became them: they considered that the facts he alluded to must be maintained, and having used all manner of previous preparation, having given a large scope, even beyond former proceedings of parliament, to every thing that could be said in his favour, then we proceeded, and proceeded with confidence, to your lordships' bar.

My lords, in the next place, I observe, with respect to

the Crime which we chose. We chose one which we contemplated in its nature with all its circumstances, with all its extensions, and with all its aggravations; and, on that review, we are bold to say, that the crimes with which we charge the prisoner are substantial crimes; that they are no errors or mistakes, such as wise and good men might possibly fall into — they are crimes — truly, and properly, and emphatically crimes. The Commons are too liberal not to allow for the difficulties of a great and arduous public situation. They know too well that domineering necessities will occur in particular situations. They know that particular situations will not give the mind time to have recourse to fixed principles, but that it is made frequently to decide in a manner that calmer reason would certainly have rejected. We know, that as we are to be served by men, the persons who serve us must be tried as men; and that there is a very large allowance indeed due to human infirmity and human error. This we know and have weighed before we came to your lordships' bar. But the crimes we charge are not the crimes and effects of common human nature and frailty, such as we know and feel and can allow for; they are crimes which have their rise in the wicked dispositions of men; they are crimes which have their rise in avarice, rapacity, pride, cruelty, ferocity, malignity of temper, haughtiness, insolence; in short, in every thing that manifest a heart blackened to the very blackest, a heart dyed deep in blackness, a heart gangreened to the very core. If we do not plant our crimes in those vices which the breast of man is made to abhor, we desire no longer to be heard on this occasion. Let every thing be pleaded that can be pleaded on the score of error and infirmity; we give up the whole: we stand on crimes of deliberation; we charge him with nothing that he did not commit against remonstrances; we charge him with nothing that he did not commit against command; we charge him with nothing that he did not commit contrary to the advice, contrary to the admonition and reprimand of those who were authorized by the laws to reprove and reprimand him. They were crimes not

against morals, but against those eternal laws of justice which you are assembled here to assert. They were not in formal and technical language, but in real and absolute effect, High Crimes and Misdemeanors.

So far as to the Crime. Now, as to the Criminal. We have not chosen to bring before you a poor, puny, trembling delinquent, misled perhaps by the faction of those that ought to have kept him in awe, and oppressed afterwards by their power in order to make his punishment the means of screening higher delinquents. We have not chosen to bring before your lordships one of those obscure offenders in other situations, whose insignificance and weakness weighed against the public prosecution, give it something like the nature of oppression; but we have brought before your lordships the first man in property and power; we have brought before you the head, the chief, the captain-general in iniquity — one in whom all the frauds, all the peculations, all the tyranny in India are embodied, disciplined, and arrayed. Then, if we have brought before you such a person, if you strike at him, you will not have need of a great many more examples — you strike at the whole corps, if you strike at the head.

Now, my lords, a few words relative to the Evidence that we have brought to support such a charge, which, we think, will be equal to the charge itself. It is evidence of record — of weighty, official, authentic record, that is, made up of papers signed by the hand of the criminal himself: it is made up of his own letters, authenticated by his own hands; it is made up of numbers of witnesses, oral, living witnesses, competent to speak to the points to which they are brought; and, I trust, that the evidence will be found such as cannot give you the least doubt in your minds of the facts; and when you consider them, when the facts are proved, I believe, from their nature and effects, you can have no doubt of their criminality.

My Lords, when we consider the late enormous power of the prisoner; when we consider his criminality, indefatigable, in the destruction of evidence; when we consider

the power he had over all testimony, I believe you and the world will be astonished that so much, so clear, and so solid a body of evidence should appear against him. My lords, this I say, that I have no doubt that in nine instances out of ten, it would satisfy the narrow precision which is supposed to prevail in all subordinate powers and delegated jurisdictions. But your lordships will maintain, what we assert and claim as the right of the subjects of Great Britain, that you are not bound by any rules whatever, except those of nature, immutable, and substantial justice. God forbid the Commons should come before your lordships, and desire that alone should be proof produced by them which is admitted to be proof by inferior jurisdictions. They then would overturn the very principles of that justice which they resort to your lordships to give to their constituents and to the people of India. God forbid that you should reject evidence, on any pretended nicety; which I am sure you will not. I have too much confidence in the learning with which you will be advised, and the liberality and nobleness of the sentiments on which you have been formed, to suppose, for a moment, that your lordships would, by any abuse of the forms and technical course of proceedings, deny justice to those claimants; for you always had a boundless power; I mean always within the limits of justice, you had a boundless power and unlimited jurisdiction. You have now a boundless object. It is not from this county or the other parish, but whole climes, and differing nations; various descriptions of men, differing in language, in manners, and in rights; men separated by every means from you. However, by the providence of God, they are come here to supplicate your assistance, and I hope and trust no rule formed on municipal maxims will prevent the interior justice that you owe to all parts of the empire.

Situated as we are, subjects, thank God, of envy, for that grandeur to which we are arrived, it is well known that great wealth is poured from India into this kingdom, and it is no degradation to us to suppose the possibility of be-

ing corrupted by that which great empires have been corrupted by, and by which assemblies and senates have been corrupted. My lords, when I say that forty thousand millions of money have come from India to England, we ought to take care that corruption does not follow; we ought to see that; for the best way of securing a man's reputation is not by a proud defiance of public opinion, but by governing himself in such a way that it may not be defied. I think there is nothing in your lordships' proceedings that appears to have the slightest trace, the faintest odour, of chicane. God forbid, that when you try the cause of Asia in the presence of Europe there should be a suspicion, that the cause of India is not as good with you, as the abuse committed by a British subject has been great! that British subjects in power should have rights which are denied to those who, at such a distance, depend on the breath of British subjects, and have deprived themselves of every other resource! My lords, I do not say this from any fear, doubt, or hesitation as to what you will do: none in the world; God forbid I should! but you all know what is disseminated abroad among the public, that those who cannot defend themselves on the merits of their transactions, may defend themselves behind those fences and entrenchments that were made to secure the liberty of the subject. God forbid that should be the case; that the laws of England should be for the rich, the powerful, and the protected, but not for the poor, the miserable, the oppressed, and the defenceless; that for them they should afford no resource at all! God forbid, that we in this kingdom should know how to confer the most extraordinary and exorbitant powers on public ministers, but that we should be poor, helpless, and deficient in calling them to account for it! God forbid, that, as no nation under Heaven equals the British nation in substantial justice, this should be the case! I trust this cause will put an end to all conjectures of this kind so disseminating throughout this kingdom and foreign nations, that in order to cover and shelter the riches of the East, we have invented a system by which we are to deny a great part of

what all the world knows, and a great part both knows and feels. I do not deprecate it, from a suspicion that such will be the case, but from knowing that, hitherto, we have moved within the circle of municipal justice, and after moving within that circle, it may be suspected we have endeavoured to force nature into that, and not endeavoured to enlarge the circle of justice into the liberties we have obtained. If such a thing should happen, it will be best to give the short answer of the Dey of Algiers: "My friends, do you not know that my subjects are a band of robbers, and that I am their captain!" Better far, my lords, and a thousand times more manly, than an hypocritical process, which, under a pretended reverence for the law, abandons mankind to all the consequences of arbitrary power. I trust no such thing can prevail in this House, but that your lordships will exercise the great plenary powers with which you are invested, in a manner that will do honour to your justice, and shew the justice of this kingdom, by perfecting the exercise of that law which binds them to us and us to them. I do not think that such opinions have been spread abroad with any foundation, but because many persons have observed, that in the Old Bailey and many subordinate tribunals, great criminals have sometimes escaped and been acquitted, though dishonourably, who had no hope to escape, if their case had come before the court; but they founded their hope in some subtilty of form, in some mode of pleading — they may prevail in subordinate courts, but will not prevail here. My lords, you are acquainted with those reports which have been spread abroad, which have only got abroad to be lashed home again, and to be entirely overturned by the sacred simplicity and nobleness of your justice.

Now, my lords, having said all that I mean to say concerning the process of the House of Commons, concerning the Crime and the Criminal to whom they attach that crime, and concerning the Evidence, I am now directed to proceed to open to your lordships a view of the proceedings, in explanation of those powers which Mr. Hast-

ings is charged to have abused. My lords, I hope that this business which falls to my share, is rather an explanation of a circumstance, than an inforcement of the crime. I hope and I trust you will be so good as to suppose that this business is not a thing that occurs every day in the ordinary round of municipal affairs, and that it is a relation of many things, that it touches many points in many cases. In other affairs in the orbit of our English business; in other affairs every allusion immediately meets its point of reference: there is something in our own laws which you meet with every day; but here you are carried as it were into another world; here you are to have the world cleared and pioneered in every part of it. You see the necessity there is of having an explanation, and now that business must be explained as it is introduced. The explanation can be but comparatively short; therefore, knowing your lordships to be possessed, along with all other judicial virtues, with that of patience, I hope and trust you will not grudge a few hours to the explanation of that which has cost the Commons near fourteen years of assiduous application; that you will not disdain a few hours to what has cost the people of India upwards of thirty years of their innate inveterate patience to endure.

The powers which Mr. Hastings is charged to have abused, are the powers delegated to him by the East India Company, and which they bind inclusively all their servants to perform, according to the duties belonging to their new office. They are bound to preserve and protect the people the same as if the Mogul's empire had existed, to observe the laws, rights, usages, and customs of the natives, and to pursue their benefit in all things. This was the express institution and purport of the office they received of the sovereign from whence they derived those powers, which, from any misfortune in human affairs, are not annihilated and suspended: the charter which they derived is not annihilated, but remains in all its force, and therefore they are thrown back to that center from which they originally preceded; for when the great Company acquired that

office in India it became an English combination, it became an integral part of the Mogul empire. When Great Britain assented to that grant virtually, and afterwards took advantage of it, Great Britain made a similar union with that country to preserve the people in all their rights, laws, and liberties which their natural sovereign was bound to impose, if he was in a condition to do so; which two duties, flowing from two original sources, are now united in one at the bar of this House, from whence originally their powers were derived.

It may be a little necessary when we are stating the powers they derived from their charters, to state in as short and comprehensive words as we can — for the matter is large indeed — that the East India Company act under two sorts of powers, the first is under the charter which the crown is authorized by act of parliament to grant; the next is from several charters, indeed several grants and charters, derived from the Emperor of Mogul, (the person in whose dominions they are chiefly,) particularly the great charter in 1765. Under those two charters they act. As to the first, it is from that charter they derive their capacity, and can be considered as a public body at all; it is from thence they acquire their capacity to grant any other charter, to hold any other offices and professions. This makes them responsible to the party from whence that power is derived; they are responsible themselves, their body as a corporate body, themselves as individuals; and the whole body as a train of servants are responsible to the public of this kingdom. This kingdom has not released this sovereignty; on the contrary, the responsibility is increased with the greatness of the powers. I hope this day you will shew, that this nation never did give a power without giving a proportionable degree of responsibility.

Having settled the point of responsibility, Mr. Burke briefly stated the several powers granted to the East India Company; what the constitution of the East India Company is, and particularly what its constitution is in reference to this Indian service. Where the great theatre of abuse was spread,

is well known. I shall therefore spare you a long history, and request you will remember, that the East India Company received this constitution originally about the latter end of the reign of Queen Elizabeth — a period of time when all sorts of monopolies were the fashion. At that time they were sent out with a very large and ample charter, for extending the commerce and for increasing the honour and reputation of the country: and it would have been thought then, and will be thought now, a very bad bargain indeed, but that the powers of that charter were confined merely to controul affairs. By degrees, as necessities required, as the theatre of operations became enlarged, it was found necessary to enlarge the powers of the Company. The first power they obtained was a power of naval discipline for their ships, a power which has since been dropt. The next was a power of law marshall; the next was a power of civil, and, to a certain degree, of criminal jurisdiction within their own settlements, and among their own people and servants. The next was the power — and there was a stretch indeed! — the power of peace and war. These great and high privileges, privileges which never were known before to be due to any subject, were given to the East India Company at a period when they required them all. About Charles II.'s time, the delegation of the whole power and sovereignty of this kingdom was sent into the East. In that light the Company began undoubtedly to be considered, and ought to be considered, as a subordinate sovereign power, that power subordinate with respect to the persons from whence it was derived. When the Company once appeared in this light, things appeared to be totally different; for, in all other countries, the political capacity of every body of whatever nature, that acts as a commonwealth, is first settled; the trade follows as a general consequence. But here the order was reversed. The constitution of the East India Company began in commerce and ended in empire; and it was natural where the first great, high, and leading powers of peace and war were given, and wanted the leading circumstances to carry on their situation. Accordingly so it

did happen. The existence of the East India Company coincided with the improved state of Europe, coincided with the rights, coincided with the laws, and, what is much more material, with the improved state of modern discipline. The existence of the East India Company coincided with the wealth of nations, and the total disuse of almost all the military parts of discipline. They became what the East India Company is; they became a great empire carrying on an extensive trade, subordinately, under the public authority. It still preserves traces of its original mercantile character, and the whole exterior order of the service is carried on upon a mercantile plan. It is carried on upon mercantile principles: it is a state in the disguise of a merchant: it is a great public office in the disguise of a counting-house. Accordingly, the whole order of proceeding which I have the honour of remarking to your lordships, is commercial; the principal, inward, real part of the Company is entirely mercantile. My lords, the Company's service, the order and discipline of which it will be necessary for me to explain, is commercial. First, all persons who go abroad in the Company's service are entered as clerks in a counting-house, and are called by a name correspondent thereto, namely, writers: they are articled for five years: the next step they become factors: they serve three years more, after which they become junior merchants; then they serve three years more, when they become senior merchants, and have pretensions to be members of council and to whatever other honours arise: for the Company had originally established factories which grew by degrees into the name of council, and as the power and influence increased, the same order continued till 1773, when the legislature (for proper reasons urging them to it) broke in upon that order of the service, and appointed to the superior stations, persons who were not, in this mode, entitled to them. Some thus appointed, as Mr. Hastings was, might be entitled by the course and order of service, but the title they derived by express act of parliament. In all other respects the business did and still does continue on a commercial footing.

Now, your lordships observe, here is a regular system, a regular order, a progressive gradation, which requires eleven years before the persons concerned in it can possibly arrive at the highest trust and situation in the Company's service, and you will therefore be naturally astonished when you know, after so long a service, after so long a continuance, that things very different have been introduced. In a short time you see persons return to England with great and ample fortunes. It will be necessary to know how that order came to be broken in upon, so completely so, that scarce a trace is remaining; because, though I will not deny that any regular order of state may be superseded by the supreme authority, whenever the public good requires it, yet the order of that service was formed on wise and salutary principles; it afforded the individuals great opportunities of acquiring experience, and gave those who watched them a constant inspection of them in all their progress. But scarce a trace of it remains to be discovered; for Mr. Hastings, by making offices which had no reference to gradation, first broke through that regulation; he next formed new offices, and invented such as had no respect to rank and gradation; and lastly, he established a whole system of offices, particularly in 1781, to which being new, none of the rules of gradation applied. The consequence was, that persons in the most immature state have been placed over the conduct of affairs, which required the greatest possible judgment and self-command.

So far with respect to the order of the Company's service, though there is something peculiar in the case of the East India Company, and different from that of any other conqueror that has ever extended his power over any other country — namely, that the Company in India is not the British nation; for when the Tartars entered into China, when they entered into Hindostan, when the Gauls and Vandals entered into Europe, they came as a nation. But it is not the English nation in India, it is nothing but a seminary for the occupation of offices. It is a nation of placemen; it is a republic, a body of people, a state, made

up of magistrates; there is no one to watch the powers of office; so far as the English nation is concerned, there is no corrective whatever. The consequence is, that being a kingdom of merchants, they are actuated by the spirit of the body — in other words, they consider themselves as having a common interest separate from that of the country which sent them, and of the country in which they are, where there is no controul of the persons that understand the language, and manners, and customs of the country. Therefore confederacy is easy, and has been general among them. Therefore you are not to expect that that should happen in this body which never happened in any body in the world — that they should be a check upon themselves. But the circumstance I state, of having no other office in the world, as a check upon them, as it is a thing that has not happened, neither can it happen elsewhere; therefore out of it has arisen the system of offices of which Mr. Hastings has thought proper to put himself at the head, in opposition to the power that sent him out, and to all other authority.

My lords, we next come to consider the emoluments of office. Do those emoluments in the smallest degree correspond with the trust attached to it? Under the name of writers, of junior merchants, of senior merchants, you have the ministers of revenue; you have judges civil, and in a great degree criminal, who prey on the greatest properties of the country; and the emoluments that belong to them are so inadequate to the dignity and force of the character, that the rule is reversed which is observed in other countries. Glory, fame, reputation, the love, the tears, and the applauses of our country, pay those arduous situations of labour, which in great commonwealths are required. The reverse is the state of affairs in the country which Mr. Hastings has abused. Instead of fixing honest and honourable rewards for those who serve the state, he has left them to prey upon it without any degree of controul; he has not provided for them honest emoluments, but has left them at liberty to prey on the country, and to find out emoluments for them-

selves in the best manner they can. These are the defects of that service: there is no honest emolument in much the greater part of it, answerable to the demands and wants of the people that serve: as one of the most honest and able of their servants, once said to me, the civil service of the East India Company resembles the military service of the Mahrattas — very little profit, but unbounded licence to plunder — open to all dishonest emolument, but shut against all just claims. The next circumstance is the extreme youth of the persons employed in this service. They have generally been sent out to India at that period of life which in all places is usually devoted to education. They have been sent there at an inordinate expence, in contemplation of the boundless power they would receive in the gradation, into which, of course, they would enter. Schoolboys without tutors, minors without guardians. The world is thus let loose upon them with all its temptations, and they are let loose upon the world. And there is in it this one thing that is remarkable. They are to exercise, what you, my lords, are now exercising, high judicial powers, without the smallest knowledge of any law, either general or municipal. It is a known rule in the service, that the judicial character, which is the last in study, which is the last in professional experience, is the first experimental situation in the service of the Company. It is expressly said, that the offices and places of the judges are to be filled by the juniors of the Company; the judicial services being taken as it were *in transitu*. As soon as a man has supplied the defects of his education, by the medium of experience, he is immediately transferred, and another young man is sent, at the expence of the property of the people of India, to finish his education and form his character. The other stations are those of statesmen, which undoubtedly require great talents to fill up, and much study. We know that in the habits of civilized life, in cultivated society, there is imbibed by men an infinite deal of morality, of maxims of state, of every thing that fits them to serve their country: but these persons are sent over without judgment, without

knowledge, without experience, to exercise functions at which any statesman here would tremble, and to which few indeed are equal. Mr. Hastings has, in his Defence, lamented his situation in this particular; and it is much to be lamented indeed. How far it will operate in the way of justification, or palliation of his conduct, when we come to examine it, remains to be seen hereafter. But the fact is, that the servants of the Company are sent out young; that they are sent out with incompetent emoluments; that they are sent into a body that forms them, to an esprit du corps without discipline. And thus it is, that the laws which have been made for the Company have proved mischievous to the Company. Their servants are obliged when they enter into the service to enter into it not only with the good character generally required of servants, but with a stipulation to perform all the duties, under heavy penalties, and renunciation of the offices. The law is clear; the engagements positive, having no exceptions in them; but any one who offends against the law is liable to the law. The consequence is, that all the little systems are to screen all the enormous offences; for every one knows, if he has taken but one penny of unlawful emolument (and they have all taken many pennies), that the most cruel oppression awaits him. He who may have taken only a present to do a good act is obliged to wink; he dare not stir; the poor man is not able to prove his case; the superior offender, the great man, is always able; in consequence of which Mr. Hastings is not only benefited by this grand defect in the Company's service, by making it impossible for any man to rise in situation and fortune; but he is favoured by having such a hold in the weakness and corruption, above, below, and on all sides, by one common participation and connivance, that the whole is complete, and accordingly he has had no complaint from the service; and he states it as one of the proofs of his merits. Now, my lords, I say, no such complaint can exist. An informer is hunted down, and has always been hunted down as a common enemy to the common profits of

great offenders. No one dared to move against him; and he threatened them if they did. We can prove to you, that when the Company were anxious to proceed against their particular servants, Mr. Hastings directly contradicted it — directly contradicted the direct and positive law of the court of directors. Not satisfied with this, before he went away he passed a general pardon, which he was not authorized to do, and at once ordered the whole complaint of the Company to be discharged.

My lords, I have given your lordships an account of writers, of merchants, who take upon themselves to exercise the office of judges; and having so done, I must now inform your lordships, that there is another description of men, whether in the Company's service or not, that are of more importance than all — a description of men under a character which you have often heard of, but which has not yet been explained, I mean the character of Banyan. The Company's servants, my lords, use the intervention of certain factors among the natives who are called banyans. The banyan, as he is called, is the steward of the house; he has the care of hiring and ordering the servants: these are his domestic functions; he is a domestic servant; and is generally chosen out of that class of the natives, who, by being habituated to misery and subjection themselves, can submit to any orders, and are fit for any of the basest offices. Having been themselves the subjects of oppression, they understand perfectly how to oppress others; having served an apprenticeship to servitude, they have qualified themselves for the trade of tyranny. They are persons without whom a European can do nothing; they know all the little frauds, all the defensive armour, all the artifices and counter-works by which abject slavery secures itself against the violence of power: they know all the lurking holes, and they hunt out distress and misery in all their labyrinths: without them Europeans with all their pompous names are nothing: these persons represent the Europeans. These people immediately make application to the gentle-

men who come to India; they take possession of them as if they were their inheritance; they have a perfect knowledge of the country; they have money, and the art of making money. The gentlemen that come from home have nothing; they have no money; they have no knowledge; they have nothing but the disposition to enrich themselves: and it is to be lamented that the banyans exercise their tyranny, not alone over the master, who does nothing, but who gives them the ticket of his name to spread the knowledge that the banyan is supported by an European; and from that moment it is not the Englishman, it is the black man that is the master of the people. We well know, my lords, how young men are sent out, and we also know equally well how soon they are in a hopeful way of thriving: the banyan knows it too: he knows the force and use of his master's name and power; with this he goes into the country with a commission in his hand, which nothing can resist: this banyan thus armed, thus empowered, has not only the people under his subjection, but his master also; he has the power over him — that dreadful power which every creditor has over his debtor. The master is no longer a master; he is a tool in the hands of this man; and actions the most abhorrent to his nature must be committed before his eyes, besides numberless ones that never come to his knowledge. The banyan glories in this. The very best things being liable to be perverted when put into a system of oppression and tyranny, the very laws of England give ten times more power to the banyan; they become unintentionally an additional security to that banyan; so that the Company's servants are, in reality, in half the service at least, nay, in more than half, *nothing* but the tools of the miserable tyranny which the lower part of the natives exercise, to the disgrace of the English power, and to the ruin of all their countrymen. The Company's servants, in order to free themselves from this horrid and degrading servitude, are obliged to become the tools of men in power; they are obliged to become the servile tools of Mr. Hastings, and to leave themselves neither honour,

power, nor reputation; and this is owing to that servitude they have under the banyan.

Now, my lords, this system of banyaning, which it was Mr. Hastings's business to keep down, he has both encouraged and established, and has formed it into and made it an iniquitous system of extortion. Nay more, my lords, Mr. Hastings has brought forward his own banyan; he has seated him in the houses of the principal nobility; he has invested him with revenues, given him emoluments, put him over the heads of nobility, who really for their grandeur, antiquity, and dignity, might almost be matched with your lordships; he has put him over their heads, and he has made him supreme judge, and has acted under him, and by him, and by banyans of various kinds. Your lordships will see hereafter the necessity of my opening this circumstance respecting the banyans. No Englishman, properly speaking, acts by himself; he must be made responsible for that person, whom he calls his banyan; for the power he has, that power the banyan uses over him; these are the persons who escape, on account of their situation, the inquiries that another man dares not stand. Through them Mr. Hastings has decided against the titles of the people of the country; through them he has exercised a discretion which he never dared—and he is the most daring criminal that ever existed—but which yet he never would have dared to exercise in person; therefore we shall shew you, that most of his iniquities have been done by banyans, and not satisfied with one, that he has employed two, three, or four, each of them not knowing the other. This, my lords, is the system which Mr. Hastings, instead of eradicating, has propagated by example, by authority, and by abuse. Here you have the description of the constitution of the Company's service from beginning to end.

My lords, I now come to mention one grand mercantile institution; an institution so extraordinary, so excellent, and so perfect, that I will venture to say human wisdom has never exceeded it, and that it was worthy of the guardianship not only of the East India Company, but of

all the powers in the world. The counting-house has here given lessons to the state; and, my lords, it will always happen, that if you can apply the regulations which private wisdom makes for private interest, to the concerns of the state, you will have from that active, awakened, and enlightened system of self-interest, a better constitution of things than ever has sprung from the wisdom of statesmen; or than they, looking for good out of themselves, ever can devise. Therefore I repeat it, that the mercantile interests of men, wherever applied to the discipline and order of the state, have produced a discipline and order which no state would be ashamed to copy, and without which no state can exist. The institution I speak of is the best contrivance ever devised by the wit of man for a remote extensive empire. Merchants having obliged themselves, from the remoteness of their correspondence, to a strictness in that correspondence, not used by any other men; accordingly, the Company have made it a fundamental part of their constitution, that the whole government should be a written government. Your lordships will observe from the papers the propriety of my opening this point: the strictest court of justice in its strictest proceedings is not more a court of record than the East India Company is in all their transactions. First, they oblige their servants to keep a diary of all their transactions; next, they oblige them to keep a letter-book in which all their letters are entered; and that diary and that letter-book they are bound to produce on requisition, although it should be mixed with affairs concerning their own connections, in commerce, or their dearest concerns in private life. These books are to be produced; and, as a grand connective, they have ordered that every proceeding in public council should be written; all written, all record. All other public bodies, the House of Lords, the House of Commons, the Secretaries of State, enter only resolves; but the argument, the decision, the dissent, does not appear. The East India Company have proceeded much further, and done much more wisely, because they have proceeded on mercantile principles; they

have ordered the whole to be written, not in their great council only, but they have ordered the same course to be pursued in every provincial council, to the minutest ramification of their servants; and the writings to be transmitted by every ship that comes into England. Therefore it was well said by an able servant of the Company, how sacred this rule ought to be held. It should be remembered, that it is the accuracy and simplicity of mercantile methods which make every transaction in the service and every expenditure a matter of record. This affords the Company the opportunity not only of discovering what the nature, character, and capacity of their servants are, but furnishes them with the means of detecting their malversations, by affording evidence and testimony under their own hands. For your lordships will observe that, for the successful completion of all evil practices, no uniform mode of proceeding will ever serve. Innocence is plain, direct, and simple. Guilt is a covered thing; accordingly, however the guilt and iniquity of to-day may be covered by specious reasons, yet when the iniquity of to-morrow comes to expose the iniquity of to-day, the man falls into prevarication and confusion, and thereby hastens his detection. Besides, my lords, the servants of the Company have not time to corrupt the records; they are torn out of their hands, and are perhaps before parliament ere they have time to invent an excuse for their conduct. This is a great and material part of the constitution of the Company, and is, as I said, (and I do not think it necessary to apologize for saying it,) the best contrivance that ever was devised by the wit of man. This is the fundamental point of the Company's service, and this, if persevered in as it ought to be, would afford such an example of the mode in which a foreign empire ought to be governed, as, I will venture to say, very few governments possess. But this leading point of the Company's service Mr. Hastings has perverted; first, by sending out agents, to whom he gave directions, that their correspondence upon the most momentous and important affairs should be delivered to him, for the purpose of being

suppressed and destroyed; secondly, by making a most mischievous and fatal distinction between public and private correspondence, in which the Company made none. As to private correspondence, there are many occasions on which it is not necessary for you to communicate your correspondence to those that are above you, and to whom you are accountable. These were the inventions of Mr. Hastings. The next way — without entering into all the ways in which he has attempted to do it — is by appointing spies and under agents, who should carry on a secret business; and thus there remains nothing but the shell and husk of a dry and official correspondence, which neither leaves any thing, nor has any thing to leave. Mr. Hastings has adopted a mode to defeat the benefit all at once, by placing the whole administration of the country in hands which are not bound to record their deliberations, which are not bound to record their assent or dissent unless they chose so to do. There he has ingulphed the most important part of the whole Company's administration. Some parts, however, remain, some precious fragments of infinite value — for highly will the nation have reason to value them, and to regret the loss of what is gone. Were it not for these precious fragments, all the shameful enormities that have disgraced a government or vexed a people, would only be known in this country through the medium of unauthentic whispers and unauthentic anecdotes; and its honours, the highest distinctions and rewards which this country has to bestow, might be given to the authors of those enormities. Avowed barbarity, base peculation, wretched extortion, and cruel tyranny might be invested with those sacred robes of justice before which the people of India and the Commons of England have now cause to come. Mr. Hastings refused, by letter to the counsel, the various acts and muniments; he refuses to be tried by his various acts and declarations delivered under his own hand; he knows that what remains of that written constitution that he has destroyed, is enough to destroy him; and therefore he

rejects it *in toto*. He desires to maintain the privilege of prevarication, of contradiction, of changing not only his conduct, but the very principles of his conduct, whenever there is any occasion for his so doing. He knows that he and that record cannot exist together. My lords, I hope you will shew that destroyers of those muniments are not to accomplish their purpose with impunity. I hope you will say to him what was said to another person on a less occasion, but with greater authority, "Out of thine own mouth will I condemn thee." You shall have his own words, his own account of his own conduct, to prove to you what he is by greater and better authority than any record.

Having gone through what I think necessary concerning the oriental part of the constitution; having done this, and stated to your lordships the abuses that existed, and how Mr. Hastings endeavoured to perpetuate and increase them, and made use of his authority for that purpose; if I have strength, and if I have not already wasted your lordships' time [Hear! hear! hear!] I shall next beg leave to state to your lordships the abuse which he has made of the other part of the public authority which the Company had acquired over the natives, in virtue of the royal charter of the present Mogul empire in 1765. It is necessary to state to your lordships who the people are over whom Mr. Hastings has abused this power. This may be a little out of order, but it will be necessary for me to explain it; and I shall do so with as much brevity as the distinctness which I mean to use, and the preparatory matter necessary to explain the matter that is next to come before you in regular charges, will permit. I shall hold myself bound to explain always by evidence; though I know it is allowed to advocates when they are opening private cases, to indulge themselves in a display of matter leading to the charges that they are to bring; and they are not always called to the strictest account for it. But, with the high opinion I have of your lordships' judgment, (and it is impossible to conceive a higher opinion than I have of this tribunal,)

and sensible of the weight of those I represent in this place, I should be sorry that any one substantial fact, or even colourable thing, should be alleged by me, which I was not able to make good to your lordships by proof. I shall hold myself bound to account to your lordships for the preliminary observations as much as for the charges themselves.

I am then to state to your lordships, that there are in India two sorts of people, totally distinct from each other in knowledge, character, rights, laws, and manners. The first set of people, I am bold to say, are the original inhabitants of Hindostan, who have, in all times and beyond all æras that we know of, been proprietors and inhabitants of that country, with manners, customs, and rules, appropriate to themselves. These people are commonly called Gentoos; the system and principle of their government is local; their laws, their manners, their religion are local. These people, who are the most benevolent of mortals, who extend their benevolence to the whole animal creation — these people are inaccessible to the whole human race. They cannot, without pollution, touch men of another race. That bond which is the bond of life, of conviviality, and which unites the species in other countries, cannot hold these people. The very element which unites mankind — I mean the sea — is forbidden to them; none of their high classes can ever pass the sea. If it could ever be truly said, that a great gulph is fixed between you and any people, it is the great gulph which the manners, opinions, and laws of these people have formed. And this, my lords, makes it ten times more necessary for us to keep a strict eye on all persons that go thither, to see that they conduct their own affairs in a manner that may be conformable to the system of this singular people. We must not force them into our narrow ideas, but extend our sphere to take in theirs. We know that the impression of opinion is — I was going to say stronger than human nature — but it is the strongest part of it; and that much of the happiness and unhappiness of mankind con-

sists in opinion. Sometimes our laws of religion differ from the laws of the land; sometimes the laws of our land differ from our other laws; but in India they are all contained in one, and bind a man eternally to the rules of what they call the cast. These people, my lords, from the oldest time, have been distributed into various orders, all hereditary, which are called casts, of which four are the most remarkable, the Brahmins, the Khetterees, the Vaysias, and the Sudras; the first the priests, to whom honours almost divine are paid; the second the military order; the third, husbandmen and merchants; the last, the menial or servile class, or cast. The higher kind cannot pass into the lower — the lower kind cannot pass into the higher. They have all their appropriate rank and situation; and their appropriate religion too, different in many of its rites, ceremonies, and institutions, in each of those classes. A man who is of Braminical character, when he forfeits his rank does not fall into the next order, but he falls out of all rank in society; he is excommunicated. These people are bound, by all laws, human and divine, to the principles of their cast; they are affected in their cast not only by voluntary crimes, by which they may lose it, but likewise by certain involuntary sufferings, by disgraces utterly out of their own power. When they lose their cast they lose every thing. ——

Having given a concise account of this people, their peculiarities, customs, manners, and religion, and of the beneficial moral and civil effects arising therefrom, as they appeared in the first period of their history — adverting, as he proceeded, to the just policy which these circumstances should have dictated to our government, and pointing out the new sources of tyranny and oppression with which they had furnished Mr. Hastings, — Mr. Burke proceeded to state the happy and flourishing condition of India under the original native government, and continued their history through the several revolutions that took place, from the irruption of the Arabians, soon after the time of Mahomet, to the usurpation of Ali Verdi

Khan, and the establishment of the English power in 1756: and he proved, in opposition to the argument urged by Mr. Hastings, in his Defence, namely, "that the native princes held their dominions as mere vassals under their conquerors," that neither under the government of the Arabian or Tartarian invaders, nor of the usurping soubahs and nabobs, were the native princes and zemindars dispossessed of their estates, and the jurisdictions annexed to them; but that, up to the last unfortunate period, they preserved their independence, rank and dignity; their forts, their seignories, and always the right, sometimes also the means, of protecting the people under them.—Here Mr. Burke closed his first day's speech, which lasted upwards of three hours.

FOURTH DAY.

Saturday, February 16.

Mr. BURKE proceeded thus:

My lords, in what I had the honour of laying before your lordships yesterday, and in what I may have further to trouble you with to-day, I trust and hope your lordships will observe a distinction, which if I did not lay down so perfectly as I ought yesterday, I hope I shall be able to mark out particularly and distinctly this day. My lords, whatever I may think necessary to state as matter of explanation, in order to give your lordships a true idea of the scene of action, the instruments Mr. Hastings employed, and the effects they produced, that I wish to be distinguished from the matter brought to criminate. The first is only illustrative in a great measure of the last; and your lordships are to look for the substantial part of the crimination at the moment when the evidence is going to be produced to you. For instance, my lords, if I state history to your lordships, as I did when I stated

that tyranny, cruelty, iniquity, and oppression, exercised by one of the usurping viceroys, led the way to our power in India; it is not that I charge Mr. Hastings with that guilt, but with having avowedly looked up to that ruler as his example, and followed him with servile fidelity. When I have spoken to your lordships of any thing abusive or leading to abuse, from its defects, in the Company's service, I have not meant to criminate Mr. Hastings with any part of that, any further than as he used the weakness of the institution to let in his abuse of power: for instance, if I have stated that the East India Company, as to its general service, was weak in general emolument and full of temptation to illegal gains, I do not state that effect as owing to Mr. Hastings, but I state it as leading to that which we shall more particularly bring before you, that Mr. Hastings, taking advantage of that infirmity, did fraudulently, corruptly, and for the purposes of his own ambition, make, under a pretended reformation; an illegal, partial, corrupt increase of emoluments to certain persons; thereby increasing the disorders of the service, and loading the Company with heavy expences.

Intreating your lordships to bear in mind this distinction, I shall beg leave to proceed to that period at which I closed; that great and memorable period which has given occasion to the proceedings of this day, and which I hope will shine for the honour of British justice, in the future annals of Great Britain. To obtain empire has been a common thing; to govern well more rare; to chastise the guilt of those who have abused the power of their country is, I hope, a glory more particularly reserved to this nation, this time, and this high court. The year 1756, my lords, is a memorable æra in the history of the world: it introduced new manners, new customs, new opinions, and new laws into India; and a brilliant page would that æra have formed in the history of this country, if we had shewn, upon that occasion, our virtue to have been equal to our fortune. If in that part of Asia that had had its native government broken up, and had fallen into confu-

sion from the petty, internal ambition of its own grandees, a star had arisen in the west, it would have prognosticated peace and happiness to the natives of that kingdom. Great and godlike would it have been to have realized that peace and that happiness: and indeed it was to be expected, seeing that dominion came from the most enlightened quarter of the globe — seeing that it came from a nation the most enlightened of that quarter. My lords, if such had been the result, the business of this day would have been spared; but it has happened otherwise, and it now remains for us to repair, by every means in our power, the injuries and evils that have ensued.

Therefore, my lords, resuming where I broke off, from your indulgence to my weakness, yesterday, I shall beg leave to restate to you, that Suraja Dowlah was by adoption the grandson of Ali Verdi Cawn, a cruel ferocious tyrant. The manner of his accession to power I will take the liberty of stating to you. He came young and inexperienced to that throne of usurpation; for it was an usurpation; but it was yet green, and the country felt uneasy under it. It had not the advantage of that prescriptive usage, that inveterate habit and opinion, which a long system of any government secures to it. The only security it had was the security of an army. A prince of the country had endeavoured to supply the weakness of his government by the greatness of his purse and his amassed treasures; but the more treasure he amassed, the more he felt the effects of his poverty; for putting money in the place of force, the consequence was the armies were unpaid, or being but scantily paid were undisciplined, disorderly, and unfaithful. In this situation, the young prince, confiding more in appearances than the reality of things, undertook (from motives which the House of Commons, notwithstanding all their industry to discover the circumstances, found some difficulty in making out) to attack a little miserable trading fort that we had erected at Calcutta. My lords, he succeeded in that attempt; his success in this was easy; there happened in consequence of it a cruel im-

prisonment, not owing I believe to the direct will of the prince; but whenever the will of the prince is too much the law, there will always be an abuse of power by the lowest of his subjects. In consequence of that imprisonment one hundred and more of our countrymen perished miserably in a dungeon. But that is a story too tragical for me to tell, and too well known for me to mention. There happened at the same time a concurrence of other events, which, in the midst of that weakness at Calcutta, displayed the strength of Great Britain in another part of Asia. For some years before, upon the coast of Coromandel, there were a number of French troops, and as we looked for a war with France, the country was armed there; and accordingly Lord Pigot, the preserver of the British dominions in Asia, detached as strong a force from his majesty's troops as could be collected, together with the ships on that station, to the assistance of the English at Calcutta. Accordingly, to make short of this history, the daring and commanding genius of Lord Clive, the patient and firm conduct and great ability of Watson, the treachery of Meer Jaffier, and the battle of Plassey, gained the command of the kingdom, and all its treasures: and we negociated with Meer Jaffier for the throne of his master, upon which throne we seated him, and obtained immediately one million sterling for the Company, and upwards of 1,230,000*l.* for individuals. In the whole, the sum collected was, I believe, near 2,230,000*l.* From the prince of the country we obtained the town of Calcutta more completely than we had it before, and twenty-four districts adjoining; which was the beginning of the great territorial acquisitions which we have made in India. Many circumstances of this acquisition I pass by. There is a sacred veil to be thrown over the beginning of all governments. They have had their origin in some matters that might as well be covered by obscurity. Time has thrown its mysterious veil over them. Prudence and discretion make it necessary to throw something of a veil over the business in question, where

the genius, military talents, and the fortune of this nation shone with a lustre never surpassed.

The first step of a revolution is to give power; the next, good laws and good orders, to give it stability. I am sorry to say the principle upon which the gentlemen in India acted at that time was such, as tended to make their new government as unstable as possible; for, by the vast sums of money acquired by individuals upon this occasion, prodigious fortunes were suddenly made; and it was discovered, that a revolution in Bengal was a mine much easier worked and more productive than the mines of Potosi and Mexico. My lords, they found that the work was not only very lucrative, but not at all difficult. Where Lord Clive forded a deep water with an unknown bottom, he left a bridge for his successors, over which the lame might hobble, and the blind might grope their way. There was not at that time any of the clerks, not a captain of a ragged band of topasses that looked for any thing less than the deposition of soubahs and the sale of kingdoms. Unfortunately, this revolution became fruitful, and when Lord Clive returned to Europe to enjoy his fame and honour in this country, there arose another set of people who thought a revolution upon that revolution might be made as lucrative to them as that was to its first projectors; and, accordingly, scarcely was Meer Jaffier seated upon his throne, than they immediately, or in a short time, projected another revolution, which was to unsettle all the former revolutions, to make way for new wars and disturbances, and for that train of peculation which ever since has vexed and oppressed that country.

My lords, there was in the house of Meer Jaffier, in his court and family, a man of a daring, interested, ferocious, subtle, bloody character, called Cossim Ali Khan, the son-in-law of Meer Jaffier, and who made no other use of his approximation to the father and his nearness of consanguinity, than to endeavour to dethrone and to murder him. The question was, where to find instruments. He

was an instrument that was fit for the persons that undertook this second mercenary revolution, which could not be covered by the smallest degree of that necessity, which was the general plea. This wicked man was not long in finding persons who observed his talents with admiration, and thought fit to employ them. After the departure of Lord Clive, Mr. Holwell, at the head of affairs, waiting for Mr. Vansittart, was considered to be only a temporary president; but he had resolved to make the best use of his time. The terrible example of the black hole had not cured him of his ambition. Mr. Holwell had determined upon another revolution; he had in his council a Mr. Sumner and a Mr. M'Guire: and the business was divided into two parts; one, a council in general; the other a select committee, which they had arranged for the better carrying on of their political affairs; but (as far as I can conceive at least) at that time the select committee had no power of acting without the council. Finally andconclusively, this party thought otherwise; but respecting these litigant parties I shall not, in this stage of the business, trouble your lordships with any thing, but the use which was made of this select committee, who did, without communicating with the rest of the council, form a plan for a new and entirely mercenary revolution.

General Calliaud, then Major Calliaud, who commanded in the field the British troops, was a person high in station, and by his station might naturally hope for a seat in the council. There was also a young gentleman, Mr. Warren Hastings, at that time resident at the city of Moorshedabad, at the Durbar of Jaffier Ali Khan, then the acknowledged and recognized prince, under the most solemn treaties of this country that can bind men, and for which he had paid immense sums of money, and was then paying. This Mr. Hastings was a pledge in his hands for the honour of the British nation, and the fidelity of their engagements; the resident at his court. My lords, these are the parties concerned in this second revolution. Mr. Holwell seems to have been the first suggester, mover, and most

active person in it. Mr. Sumner followed him in the council. Mr. M'Guire co-operated; but they could do nothing by themselves. General Calliaud was necessary, for force and treachery were necessary; and the return of Mr. Hastings was necessary to accomplish that treachery. General Calliaud was the general in the field; Mr. Holwell the governor, who considered himself as only in the temporary possession of power, and waited for Mr. Vansittart, but urged the revolution strongly; for if Mr. Vansittart should arrive before his plot could be finally put in execution, he would have all the advantage of it, and Mr. Holwell be considered as the secondary instrument. So far as the House of Commons have been able to discover, Mr Holwell, conceiving this plan, wished to carry it into execution before the arrival of Mr. Vansittart. There was some obscurity as to Mr. Hastings in this point; but General Calliaud wished to keep it back. He concurred inwardly in the principles, propriety, and necessity of this revolution, but did not choose to carry it into execution until Mr. Vansittart arrived to give character, weight, and effect to the whole. Mr. Holwell endeavouring to stimulate him forward to the enterprize, which, without him, could not be undertaken at all, General Calliaud gave him such reasons, not for postponing, but for totally abandoning it, shewing the inutility, injustice, and danger of it, as must have damned it in the minds of all good men, and ought to have damned it in his; but your lordships will see that they persevered in this plan, and that General Calliaud endeavoured to delude the nabob by the most direct and positive assurances of friendship and protection that it was possible to give. I enter into the circumstances of this revolution the more fully, because it exposes the mischievous licence taken by the servants of the Company in shaking off the most permanent treaty guaranteed by the Company's faith, and shews at the same time the art and treachery by which this revolution was accomplished. While the event stood pending; while Mr. Holwell urged it forward, and Mr. Vansittart was every day

expected, there happened an event which throws much light upon the whole proceeding. Your lordships will not, when you have heard it, blame me for dilating upon it fully and particularly, and bringing it before you, from the beginning to the end; seeing that from this transaction alone you will be enabled to form a correct judgment of the state of things in that country, when Mr. Hastings was sent for the purpose of reforming that state. My lords, the business is commonly known by the name of the story of the three seals. An account of it is to be found in the Appendix, No. 10. to the first report of the committee of 1772. The name seems a little equivocal. It points to what is not reported. It was an event in obscurity to most people; and amongst them perhaps I may say of myself, that satisfied with the report, I have not examined to the end all the appendix; and it is not till within the present year that I have been made acquainted with this memorable history of the three seals. The plan was for the destruction of the nabob's son Meeran, a youth in the flower of his age, bold, vigorous, active, full of those politics, which men who deal in usurpation are never wanting in; commanding the army at that time, about the 15th of April 1760. The nabob himself, exactly at what time before I cannot say, was at the camp, in which his son acted as commander-in-chief, and General Calliaud under him as commander of the auxiliary forces of the Company. Upon the 15th of April, (I am to tell it from the parties themselves, I wish I had other and better authority,) the nabob came into the tent of General Calliaud, and with looks of the utmost embarrassment, big with something that was too large and burthensome to conceal, and too difficult to be told, appeared to be in great distraction of mind. The general, seeing him under this embarrassment, kindly and generously, as became a fast and sure friend, employed (to use his own words) "some of those kind of assurances which often open the hearts of men." Accordingly, fortified by these assurances, and willing to unburden himself of this secret that oppressed him, he opened

his heart to this new commander of his new allies, friends, and protectors. I ought to have mentioned before, that the present emperor of the Moguls, then the prince royal, or shah zada, escaping the confinement of his father, had put himself at the head of sundry chiefs, and finding Bengal broke down by various revolutions, penetrated into the province of Bahar with considerable force; and there the parties were in a state of war; whether justly or not is not now the question. The nabob informed General Calliaud he had received a message from the prince, informing him he had an intention, as well he might, supposing we were as well disposed to him as we shewed ourselves afterwards, to surrender himself into the hands of him the nabob, but at the same time wished for a guarantee, that the commander-in-chief of the English forces should give him security for his life and honour, when he had surrendered himself in that manner. The nabob stated that he had a further view — when the prince had delivered himself into his hands, his intention was to murder him, which could not be done without the assistance of the general. In the first place, the prince, without the security of the general, would not deliver himself up into his hands, and without his concurrence he could not be murdered. This difficulty pressed upon the mind of the nabob. The general heard this astonishing proposition without any considerable emotion. The general was a man habituated to great affairs, versed in revolutions, and had a mind fortified for great events. He heard it without shewing the least degree of abhorrence, by no means at the same time accepting the proposition. He was ready to do every thing for his service, but said, it should be upon such terms "as were consistent with the honour of his country, and the sacred regard we paid to our word;" and told him the assurance would not be given to the prince by him until he had consulted Mr. Holwell who governed. This happened in the morning of the 15th of April, and on that morning General Calliaud writes to Mr. Holwell an account of this conversation and proposition.

In the evening, General Calliaud, Mr. Lushington, Captain Knox, and Warren Hastings; and upon the part of the nabob, himself, his son, and the Persian Moonshy, a sort of spy in that country, having assembled, the nabob revived the proposition, and in a cool manner. Another thing happened of a more extraordinary kind; a person called Conderry Dewan, or principal steward to the prince, now the grand mogul and sovereign under whom the Company hold their charter, had made a proposition, that if the command of a very large and considerable territory that was held by his master, was assured to him, together with the payment of a lack of rupees, he for those considerations would deliver the mogul alive into their hands, if he could; if not, he would murder him. This proposition was made to the English commander: what discourse took place upon it is a little uncertain. Mr. Hastings is stated to have acted as interpreter. General Calliaud agreed to it without any difficulty. The instrument was drawn by the Persian Moonshy in the place, for securing to the party the reward of this perfidious and murderous act. Accordingly, first the nabob put his own seal to it; the nabob's son Meeran put his seal to it; the third was wanting, and Mr. Lushington was sent for near half a mile to apply it; the three seals were thus put to it; and the transaction is known as the business or affair of the three seals.

My lords, this business of the three seals did, by some means or other, come to light. It is not quite fully explained; but suspicion was bred in the minds of some persons by means of Mr. Holwell that came home. The story was conveyed to the ears of the court of directors, and they wrote a letter, under the date of the 7th of October 1761, which was a little more than a year after this extraordinary transaction, stating that, in conjunction with the future nabob, General Calliaud had signed a paper, offering the reward of a lack of rupees for the assassination of the Shah Zada, which paper was offered to the chief at Patna for him to sign, but which he refused doing. Accordingly,

the East India Company ordered a strict inquiry to be made into this, which was considered as a most infamous transaction; but the East India Company, who did their duty with great manliness of conduct, did it in a manner that could not produce any serious mischief to the parties who were guilty. They directed the very persons concerned in these transactions to do the best they could to try one another. I entreat your lordships' attention to the manner in which this collusive business was conducted. This matter came to be examined before the council upon the 4th of October 1762. The council then consisted of Peter Amyatt, William M'Guire, Warren Hastings, William Hay, and Hugh Watts. Mr. Hastings having accomplished his business as resident had taken the seat to which his seniority entitled him in the council. But here the difficulty arose, that Mr. Hastings, who is represented to have acted as interpreter in this business, was not a fit person to sit as judge in this affair. It likewise appeared, that there might be objections to some of the witnesses; for Mr. Lushington had put his seal to the transaction, and had made an affidavit at Patna that he had so done, and that Warren Hastings was interpreter upon that occasion. The question was, how to get the interpreter out of his interpretation, and put him upon the seat of justice. The manner in which it was effected is curious; it was thus: Mr. Lushington, who by this time was got completely over, as he himself tells you, was, by conferences with General Calliaud and Captain Knox, and by arguments and reasons by them delivered, persuaded to unsay his swearing, and declare he believed that the affidavit which he had made before, and while the transactions were recent, or nearly so, must have been made by mistake — that he believed it was not Mr. Hastings but he himself that interpreted. Mr. Lushington, therefore, completely loses his memory, and accepts of a memory given to him by persons who were a party in the transaction; and Mr. Hastings is put into the condition of a judge, and declared not to have been the interpreter upon

that occasion. Mr. Hastings is examined; but, what is most extraordinary, — and your lordships will look at it at your leisure, and consider it as a pattern in cases of this kind,—he does not recollect; he thinks he was not there; he thinks if he was there as interpreter he could not forget it. And, upon this inaccurate memory of his, not venturing to say positively he was not the interpreter and not there, Mr. Hastings is discharged from being an accomplice; removes from the bar, and takes his place upon the seat of justice! General Calliaud comes forward to make his defence. Mr. Lushington was taken off his back; but one person remained troublesome to him; and that was Captain Knox; but Captain Knox was made to say before Mr. Lushington or some other witness, "that it was a pity so fine a young fellow should fall in that manner," meaning by that "fine young fellow," the prince royal, the descendant of Tamerlane, from whom the East India Company derive their charter. He was dissenting, and therefore some use is made of his evidence. The defence of General Calliaud was this, that he was apprehensive the nabob was alarmed at the violent designs formed against him by Mr. Holwell, and therefore to quiet his mind with an opiate, made up of murder and treason, (it must be an odd kind of mind to be quieted by such means,) to quiet his mind, and to shew how ready he was to go all kind of lengths with him, and to give up body and soul to him, he put his seal to this extraordinary act; he put his seal to this wonderful paper. He stated he was of opinion that nothing at all would happen from it; that no such murder would be committed, whatsoever the intention of the parties were; that such a thing was not likely to take place; and that in effect he had said so in a letter which it happens very unluckily was written the day after the business of the seals. In that letter he says, "I think nothing will come of this matter, but there could be no harm in trying." He found this leaning against him — this experimental treachery; and he says the object of the murder appeared to him good enough to make a trial of; at the same time he was afraid nothing

would come of it; and in general the whole point of it was, that his mind was clear — "my hands are guilty, but my heart is free." He conceived it was very improper, undoubtedly, to do such an act, if he suspected any thing would happen from it. He let the paper out of his hands, and put it into the hands of murderers. This was brought forward as the extenuation. It was all done in the purity of his heart! This is the perpetual plea that your lordships are to hear of, and will hear of for ever. He thought it necessary to quiet the mind of the nabob; to give him perfect ease from the fears of Mr. Holwell. From these motives he did the act so abhorrent from his nature, and of which he says he expressed such abhorrence upon the morning of the 15th. Mr. Hastings is then called upon to state, whether the nabob was not informed of the design. Mr. Hastings does not, however, recollect any thing of the matter; he certainly seems not to think he ever mentioned it to the nabob, or the nabob to him; but he recollects speaking to some confidential secretaries of the nabob, and making some inquiries of them, but opposite inquiry upon the subject he does not recollect that he made. And further this deponent sayeth not. Now come the court of directors that instituted this prosecution with such vigour. I beg leave to state, that the nabob, one of the parties to the design, was at that time a sort of prisoner, or an exile, at Calcutta. His moonshey was there, or might have been there; who, though a party to this transaction, was never called to an account for it, in any sense or degree; but the court of directors, (who are so easily satisfied though so ready to condemn,) at the first proposition, were ready afterwards to acquit, and not only to acquit, but to approve the measure; they at the same time honourably acquit the party accused, and upon the same grounds commend his fidelity and zeal for their service. Such, my lords, is the whole story of this campaign of the three seals. The great use and end of this exposition is to shew your lordships that there were other trials and other acquittals than those made by the collusive plan

of the directors. Those are the proceedings upon which I meant to illustrate and shew the horrible condition of India; to let you see in one point of view in what a dreadful and horrible condition that country stood in 1761, when Mr. Hastings began his political campaign.

My lords, the second revolution the story of the three seals interrupted for a while; though there was a continuity of the business, the affair of the seals being intended to accomplish one very necessary part of the plot, which was to lull the nabob into a perfect security with regard to the designs that were carrying on against him. Now, my lords, the plan proceeds. There was another demurrer: business of this kind is not easily got through: there was the nabob's son to remove; and to carry that revolution was not very easy. Houses are strong that have eldest sons grown up fit to command armies. The plan about the month of July began to get into very great ripeness and forwardness: General Calliaud urged it forward, and Mr. Vansittart being hourly expected, a bargain was to be made with that bold, desperate, designing man Cossim Ali Cawn, a man who aimed at every thing, and scrupled at nothing to obtain what he aimed at. His point was to be appointed during the life of Jaffier Ali Cawn (with a design of murdering him too) his lieutenant; which lieutenant, according to the usage of that country, totally supersedes the authority of the chief magistrate, and renders him a cypher in the lieutenant's hands. The command of his troops, and the whole administration of the country, is given to the lieutenant. This was a part of the plan of Cossim Ali. He was, after the succession to the lieutenancy, to be named successor to the nabob. There were, however, several children in the way of that succession. At this period the most extraordinary event happened that I believe is recorded in history. The eldest son of the nabob, the Prince Meeran, laying asleep in his tent, suddenly, without any one knowing it, without any alarm or menace even in the heavens being heard, without any one being hurt or alarmed in the camp, is killed with a flash of

lightning! Thus, the gordian knot is broken. This prince dies of this flash of lightning, and Mr. Lushington comes in frightened, with his hair erect, to General Calliaud, and tells him, in the utmost alarm, of the circumstance that was afterwards to give so much pleasure! The general was seized with the fright, fearing the army should mutiny upon the death of their chief. It was contrived as never any thing was contrived before. The prince was killed; none of his attendants were alarmed; not the least omrah knew it. The fact was concealed by the ability, good conduct, and dexterity of Colonel Calliaud, for seven days together, till he had led the army out of danger. It was a lucky, providential, and most useful flash of lightening! My lords, there were at that time some of the East India Company's people at Calcutta who were very schismatical in this business. I do not mean to charge or prove that fact as criminal, though there were those who did raise and disseminate such notions.

As soon as this affair is over, then there happens another interposition of Heaven. Mr. Vansittart comes upon the scene; he was rather debauched by the amazing flood of difficulty. In a few days they send for Colonel Calliaud; Mr. Vansittart's objections vanish in an instant; every thing is easy; the general agrees to take the part they saved for Cossim Ali Cawn; and Mr. Hastings and they open a treaty with him, conclude it, and leave the management to two persons, Mr. Holwell, and a person whom we have heard of so often called Coja Petruse, or the respectable Peter. Mr. Holwell and the nabob settled the preliminaries first; and the whole is afterwards conducted by him. An effective plan is laid, and the revolution is accomplished. Cosim Ali Cawn was to have the succession and the present lieutenancy; every thing is put into his hands, and he is to make large concessions, which you shall hear of presently, to the Company. Cosim Ali Cawn proposed a good supplement to the lightning flash; he proposed to Mr. Holwell to murder the nabob; but Mr. Holwell was a man of too much honour to suffer that; he flew out in a

minute; and declared the whole business should stop, unless the affair of the murder was given up, but, at the same time, if he gave the nabob over to him, and put his person, his treasures, and every thing else into his hands, he might have had no great reason to complain, if he was to be left to the execution of his own projects in his own way.

My lords, you will have an opportunity of observing the progress of these plots. There is one thing that has constantly and uniformly pervaded the whole policy of the Company's servants; and which they declared to be the principle of their actions at that time — first to take care of the public interest; next of their own: first to take care the Company got an enormous bribe, and, under the shadow of that enormous bribe, to secure all the little paltry presents and emoluments to themselves. And, accordingly, there were three rich maritime provinces, or nearly so, Burdwan, Midnapore, and Chittagong, to be severed from the soubaship, and given to the Company. The manner of the stipulations it is not necessary to trouble you with. The treaty was signed, sealed, and executed by these parties at Calcutta, with the greatest possible secrecy. The lieutenancy was secured to him; and he was likewise, as a secret article, to give the sum of 200,000*l.* as a reward to the gentlemen for serving him so effectually, and their country as well. Upon these stipulations, Mr. Vansittart (Mr. Hastings being then at the durbar, and having every thing prepared and smooth,) went up: there was a commission of delegation, consisting of Mr. Vansittart and General Calliaud. They went up to the seat of government of the country, to congratulate and to pay their devotions to the nabob, upon the coming of a new governor into the place, and to give assurances of mutual friendship. They went up into the country, after securing the country below; and they first persuaded the nabob to deliver over his power, so negociated for, into the hands of Cossim Ali Cawn. They proposed this, but the man was frightened out of his wits at it, and asked,

"What is it he has bid for me? I will give half as much again to save myself as he has offered; pray let me know what my price is." This he desired in vain. They were too firm and faithful to their engagement. They resolved he should be put into the hands of Cossim Ali Cawn. The nabob thought that more dangerous than giving up the whole: he surrenders up the whole — they grasped at it; he throws himself into a boat; he would not stay an hour; but goes down to Calcutta, to leave his blood there if we would take it. The present, then, was a sum of 200,000*l.* or thereabouts. The expence of the revolution is stated somewhere about that sum; a little more or less; it is no matter. This money seems to be the leading principle: though a little, low principle, as it is, it seems to be the most active. The heart is not the largest part of the body, but it sets the rest of the machine a going. Here, my lords, ended the second revolution in that country, effected, indeed, without bloodshed, but with infinite treachery, and with infinite expence to the Company.

Cossim Ali Cawn had scarce got upon the throne, which he had mounted by our public spirit and his iniquity, when he began to fortify himself against those who were or could be the donors of such fatal gifts: he removed from Moorshedabad higher up the country, to Mongheer, in order to be more out of our view: he kept his word pretty faithfully to the Company; and though he had no money, he gave obligations, by the name of teeps, a term with which your lordships will become intimate in the progress of these transactions. By this means was the whole of this business conducted. He began directly to rack and tear the provinces left to him, to get as much from those provinces as should compensate him for the revenue of the great provinces he had lost. Accordingly, he began a scene of extortion, horrid, nefarious, and without example, upon that country: he is one of the precedents which Mr. Hastings, in his defence at the bar of the House of Commons, thought fit to adduce as those that would justify him in the conduct he pursued. This Cossim Ali

Cawn, after he had racked and acted like a tyrant, fell upon the country. My lords, there was a person called Juggut Seet, a banker, such a one as was never heard of in the world before; his house was similar to the Bank of England; their correspondence extended all over India, and it is believed they were not worth less than seven or eight millions of money. This house was a prey fit for a tyrant; but Mr. Holwell, who ought to have been security for all the property delivered over to that man, said of this house, that its receipts were to be delivered over to Satan to be buffeted. He predicted it, and frequently mentioned it, and this it was that caused the misfortunes to fall upon them. He had chosen a Satan to buffet them, who did indeed buffet them, both by robbery and by the murder of the principal persons of that house. There was such a scene of ferocious tyranny, such a destruction and cutting up by the roots of public credit in that country, as was never before exhibited. There was, my lords, another great person called Ramnaram, who had received from the English the most positive assurances of friendship and good faith; notwithstanding which, Mr. M'Guire delivered him up for five thousand gold mohurs, something more than 8000*l.* sterling — delivered him up to be imprisoned, to be robbed, to be tortured, and finally, to be murdered by Cossim Ali Cawn, our government looking on at the scene. I had almost omitted to mention a Mr. Motte, who was then a friend of Mr. Hastings. There was a person there, a Vackeel, in the greatest confidence with him; he strove for his house and property. There was some scuffle between them; one attempted to seize, the other to retain. They made a complaint to the nabob, and he ordered this man, for this very scuffle about his property, to be blown off from the mouth of a cannon. I am not to tell you all the villainies of this tyrant that sat upon the throne of Bengal. The government never endeavoured to correct him in the exercise of any one of his tyrannies.

My lords, there is one circumstance that comes across

me here, which will tend to shew another grievance that afflicted that country, and afflicted it long, and was one of the causes of these chief disasters. And I doubt whether it is so completely extirpated, that some parts of its roots may not remain in the ground at this moment; that is, commerce. In order to possess themselves of its riches, every country in the world was bringing that country to ruin. The Company's servants used their dustuck. The Company had large privileges under the dustuck, or permit, for their goods to pass without duties in the country. The servants of the Company used it for their private trade. Whilst the natives of the country were powerful they used it with moderation; but as soon as the power came into their hands, their trade was what you would expect of the trade of a man who is an emperor; it was an imperial trade; it was more like robbery than trade: they appeared every where, they sold at their own prices to others, and they forced people to sell to them at their prices; they appeared like an army going to pillage people under the pretence of commerce, rather than any thing else. They superseded the magistracy, that disappeared every where before them; in vain the people applied for protection from the English merchants going through the country, and ravaging them worse than Tartar conquerors. My lords, Mr. Hastings did the best he could to prevent it. He was afraid if this went on, there would be little left to him for confiscation or extortion, in that country which was governed by Cossim Ali Cawn, was ravaged by dustucks in the upper provinces, was torn to pieces by his rapacity in the lower. This brought on the treaty of Mongheer, which was to give them some relief against this cruel, cursed, and oppressive trade, which was worse than the ravages of the sovereign. Mr. Vansittart made a treaty, known by the title of the treaty of Mongheer, which tended very much to repair the trade and put it in a just and proper way. As it ever was believed in that country, that rapacity and trade could never be superseded by any thing but bribery, and nothing but corruption could be superseded

by oppression, in that way the select committee made a treaty without the rest of the council — some of the parties were advocates for the treaty; others were advocates for the trade as it is called. It was the universal opinion that the trade was bought by a great sum of money, and there are evidences of that sum of money which was stated to be paid for it; but it never has been investigated to the bottom, as it ought. We have upon our records the sum of seventy thousand pounds that was paid to the persons concerned in that negociation. The rest were exceedingly hurt, seeing they were not benefited by the negociation, and were losing by the trade. We have it on our journals. At the same time their trade was prescribed, but the negociators were not proscribed; and Mr. Vansittart and Mr. Hastings were not subject to those general regulations.

In the disputes which this settlement produced, undoubtedly Mr. Hastings and Mr. Vansittart were upon the right side — I put the motives and the secret history out of the case — they were perfectly upon the right side; and they shewed to a demonstration the mischiefs of this trade. However, as the other party were strong, and did not directly let go their hold of this great advantage, first there were dissentions, then murders; various complaints arose at Illahabad, and Cossim Ali Cawn was driven to the wall; at the same time having made what he could of his situation; and war broke out at last between us. How did it break out? This Cossim Ali Cawn, whom Mr. Hastings had put upon the throne of Bengal, signalized his first acts of hostilities against the faith of treaties, the rules of war, and every principle of honour. This pretended emperor, that was put upon the throne, by Mr. Hastings, knowing his character and disposition, and knowing very well what such a man was capable of doing; this man, my lords, massacred the English wherever he met them. There were about two hundred of the Company's servants, or their dependants, slaughtered with every circumstance of the most abominable cruelty. Their limbs were cut in pieces. That tyrant whom Mr. Hastings had

set up, cut, and hacked the limbs of the British subjects in the most cruel and perfidious manner. He threw them into wells, and polluted the waters of the country with British blood. Immediately war was declared against him in form. That war set the whole country in a flame, and then first began to appear other persons upon the scene, with whose business your lordships will find yourselves deeply concerned. It was necessary then for another nabob to be put up. Another revolution and war was resorted to. But the man who had been dethroned for his tyranny, for his incapacity, for the numberless iniquities he was said to have committed, and for his total unfitness and disinclination to all government, this very man they look up to again to put him upon the throne, from which two years before they had deposed him. This revolution was not made without being brought forward according to the usual order of procession, in which the youngest walks first. First came the Company. And the Company had secured to it those provinces that Cossim Ali Cawn had given, rather by way of mortgage than any thing else, in perpetuity, or rather by way of donation, to the army and navy, that had little to do in this affair. They taxed him — what sum do you think? They taxed him no less, with that empty and undone treasury, in that harassed country, than 500,000*l.* for their private emolument. For the consideration of this iniquitous trade and its abuses, that sum was given to individuals in this revolution. Now come the Company in properly. Upon hearing this they were all in a flame. The directors were all on fire at this donation to the army; and declared they would give it no support or countenance whatever. You will see in the course of this affair, what countenance and support they did give it. In the mean time, the gentlemen did not trouble their heads much about the Company; but went on to exact, and got this 500,000*l.* as soon as they could. This was the third revolution. But, for this amazing sum, this poor miserable prince was dragged from Moorshedabad to Calcutta, and back again from Calcutta to Moorshedabad, the sport of fortune, and

the plaything of avarice. This poor man was again put upon the musnud. He was put up as a pageant upon his throne, and no authority was left him but to give gifts and donations; that is the *primum vivens*, and the *ultimum moriens* of these unhappy princes; that is the only thing left. One would have imagined, my lords, that the English council would have been satisfied with what they had accomplished; that they would have remained quiet from war; and that the money that was extorted upon this occasion would have been sufficient. But no — they wished to have something more; they did not like the restitution; and therefore they set about deposing the monarch they had put upon the throne. Cossim Ali Cawn was carrying on a fierce war against him. They could not, with a good grace, depose the man they had so recently set up; — but what did they do?

My lords, there were at this time, at the court of the soubah, two persons of great consideration in Bengal, of whose names you will hear; the principal was Mahomed Reza Cawn, a man of great rank, much authority, understood piety in his own religion, great learning in the law, of the first class of nobility in the country, at the same time dreaded, abhorred, and feared beyond any thing else by the nabob, who thought him much better entitled to the soubaship, for his qualifications, than himself: though upon the other side there was another of the natives, a chief man among the Gentoos, known by the name of the great rajah Nundcomar. He was of the same rank among the Gentoos as Mahomed Reza Cawn was among the Mahomedans. Being a Gentoo, the nabob knew that he could not aspire to the office of soubahdar; for that reason he appointed him to be his naib, or deputy; whilst he was naturally inimical to Mahomed Reza Cawn, whom he dreaded, fearing that he might find a flaw in his title. Of this competition the English council, in whom all the efficient power resided, were resolved to profit. The office was put up to auction. Mahomed Reza Cawn bid largely; Nundcomar bid largely; it was not money but the merits

of Mahomed Reza Cawn, who was deemed more likely to keep the nabob in a fitter condition for future exactions; but with a bribe of 220,000*l.* (a large sum of money,) he tempted them to invest him with the naibship. Nundcomar fell below his price; he fought the battle as fast as he could; it was eagle to eagle; as fast as he bid upon one side, Nundcomar bid upon the other; but Nundcomar was pushed to the wall; some received his money, others received the other's money, and a deputation was sent to the miserable nabob to dethrone him; they force Nundcomar, his only support, from his side, for the purpose of putting Mahomed Reza Cawn there. This split the council into factions; the smallest party adhered to Nundcomar. Jaffier Ali Cawn clung, as to the last pillar of his support, to Nundcomar; finding there was a deputation going on to sell him again, he strove to hold Nundcomar, and died in the struggle. His gigantic form, overwhelmed with disappointments, was driven into the jaws of death; he fell at once the miserable victim of the successive changes and revolutions, which had been brought about through versatile rapacity. Thus fell that man of gigantic form. The same deputation continued. They would not prefer the son; but a son of a harlot they preferred to another child, because, not having a good title, he would be in a state of greater dependance upon them. My lords, I know of no other reason for it, but they would never completely recognize him until he was obliged, clinging to them as his father did, to renounce Nundcomar, whom they tore from his side and carried down to Calcutta. That man having the weakness to become the first informer, was the first in point of person whom they fell upon, and he was afterwards charged with having been guilty of forgery, and hanged by corrupt judges. After Cossim Ali Cawn had been defeated by the very great merit of our commanders, who shewed as much military conduct as ever was known, he fought every inch of his way, and carried with him out of the country three millions sterling, in money or in jewels. Cossim Ali Cawn, like a lion, turned his face

upon his pursuers, till he went along the frontiers, and drew with him the soubah of Oude. The Mogul entered on one side; Bulvant Sing, the rajah of Benares, entered at the other. After various changes of fortune, that which began in the treachery of the civil service was redeemed out of it by the hands of military merit.

My lords, there are many examples of the same sort; but the Company hearing of all these changes; hearing and knowing such an incredible body of perfidy; that there was a general market made of the country, and of the people of the country; that the flames of war were spread from country to country; and that the rapacity which originally gave rise to it was following it in its progress; the Company, foreseeing that unless a stop was speedily put to the mal-practices of their servants, their own existence would be endangered, and feeling themselves sinking by the conquests obtained, found it necessary to come to some settlement. Having had disputes with Lord Clive, they came to a compromise with him, and sent him out to that country in the year 1765, in order, that by his name, credit, authority, and weight, he might rectify the innumerable abuses that had prevailed, particularly that fundamental one, the abuse of presents; for all those bribes and rewards had not the name of condition or stipulation, but came in the shape of presents, or gratuities given afterwards. The parties might give them what names they pleased, but they were the donations of misery to power, the generosity of wretchedness to oppressors, and left neither property nor security to any person in the country. Lord Clive went out with new covenants. And this makes the great part of the history of Mr. Hastings's crimes, which were the origin of the whole. Lord Clive went out to put an end to them, though he himself was a large receiver of them. I think they choose well. His name and authority would necessarily have great weight. They sent him out with amazing powers, such as no servant of the Company ever had before. I do not pretend to uphold the totality of his conduct; some mea-

sures he took cannot be defended; but I do say, that the plans he laid down, and the course he pursued, were in general good and well imagined, and that he settled great foundations if they had been adhered to. For, my lords, he first took strong measures, being to put an end to a great many abuses that prevailed in that country: then he went up into it, and did for a military man an act that will ever have great military merit; he put a boundary to the aspiring spirit of the rulers of the country; he circumscribed them in their limits, and said, here at the river Cawumassa is the period of the British dominions. He secured this to the quiet of the country. He first settled the soubah of Oude, who had been driven from his dominions by the ability of this commander. He did as he pleased, and he astonished all Asia. He reinstated this enemy of the country after having defeated his arms; by which he did more to quiet the minds of the people of Asia than by any thing that had been done before. The Mogul was at the head of the Mussulman religion — the head likewise of the empire; a name honoured and esteemed even in the midst of those ruins. He caused him to be recognized by all the parties concerned; he obtained the dewanny, which is the grand period of the constitutional interest of the Company in the affairs of India; he quieted the minds of the people; he gave to the settlement of Bengal a constitutional form, and a legal right, acknowledged and recognized now for the first time by all the princes of the country. He had the care, and he took care, of Bulvant Sing, the rajah of Benares, who took our part in that war. As the country had before granted the superiority of that province to Bulvant Sing, which the Company ordered to be re-settled, he secured to him the quiet independence given by his former masters in that part of the world. For the rents which ought to be paid to the vizairrut, Bulvant Sing paid various sums to the amount of 150,000*l.* From the beginning we have been great gainers. This was secured by Bulvant Sing. All our enemies were quieted by the restitution of the nabob of

Oude, and all Asia was conciliated by our settlement of the king to whom we gave it. The unhappy fugitive prince was now deposed, and was flying about, the sport of fortune. He gave him a place of residence in an honourable way, and a revenue able to support him; and he received the various powers, which made a considerable share of regal authority. They gave the country peace; and as to the Company, they took the business exactly in the way it was best for them: they took not the vice-royalty, as Mr. Holwell would have forced them to do; they left the government of the country in the hands of the soubah, a vice-roy, to administer justice under the forms of royalty. The Company took a much less invidious thing — the Dewanny, the great stewardship, which gave them the whole management of the revenue, and made them appear not the oppressors, but the protectors of the people. This was the office they took. It had all the real power without the invidious oppression of it; it gave them every thing — as the nabob was now falling into the mere state of royalty, or vice-royalty, stript of the power of maintaining any troops: but we maintain them for him by contract, to preserve the dignity of the court, the prejudices of the Mahometans, and particularly for their great nobility, that suffered more by the loss of all employments: but the revenue that was left him was only four or five hundred thousand a year. On these happy foundations the Company claim and enjoy more securely the benefit of the revenues. They put the collection of them into the hands of Mahomed Reza Khan, who filled the office of deputy-soubah when Lord Clive arrived, and whom he did not displace.

Lord Clive did not stay long enough in that country to give consistency and stability to the settlement he made; and, accordingly, the man that followed, though I believe he was the honestest man that ever served the country, I mean Governor Verelst, had not weight enough given him to poise the country, though there were not such grievances as entirely subverted the estates of great and ancient fami-

lies, and entirely changed the settlements of the people. But this made it necessary for the Company to send out a commission in 1769, of Mr. Vansittart, Mr. Ford, and Mr. Scrafton. The unfortunate fate of these gentlemen is known to all the world. The grand thing the Company ordered these supervisors to do, was to give directions to the servants of the Company, that they should none of them, upon any account whatever, take presents. As soon as it was known that the commissioners unfortunately perished, as every one knows they did, the Company were preparing to send out another commission, for the rectification of those grievances, when the parliament thought it necessary, from the full sense they had of the magnitude of the evils, to take the subject into their hands; to appoint another commission in a parliamentary way, of which Mr. Hastings was one, for the better government of that country. Whether Mr. Hastings was appointed upon account of his local knowledge, and the number of friends he had there, I cannot say; but soon after the deputation for the restoration of Jaffier Ali Cawn, and before Lord Clive arrived, he came to England; and here he staid attending to his own interests; and he negociated so successfully, that he went out to India with great powers. Indeed, when this government was settled, Moorshedabad still continued the seat of the native government, and of all the collections. The Company were satisfied with putting a resident at the durbar, or court of the nabob, as a controul over the native collector.

My lords, I should not have given you this trouble, if it had not been necessary to possess you clearly with the progressive steps by which the Company's government was established, and superseded the native government. The first step that was taken was the appointing supervisors in every province, as a controul over the native collectors. The next was to establish a general council of revenue at Moorshedabad, to superintend the deputy great steward, Mahomed Reza Cawn; and lastly, in the year 1772, that council was by Mr. Hastings overturned, the

whole controul was brought down to Calcutta; Mahomed Reza Cawn, by order of the Company, was suspended, turned out, in fact, from all his offices; and turned out for reasons and upon principles which you will hereafter see; and at last the dewanny was entirely taken out of the natives' hands in the first instance, and settled in the supreme council of presidency at Calcutta. And so it remained until the year 1781, when Mr. Hastings made another revolution, and took it out of the hands of the council-general, which the acts of parliament and the acts of the Company had invested with it, and put it in a subordinate council, entirely dependant upon himself, and separate from the public authority.

Thus, my lords, you have before you the whole of these revolutions. I have stated them with perspicuity, and the grounds and principles upon which they were made, and the abuses that grew out of them one by one, as they happened; as every revolution produced these abuses. You see the native government vanishing away, until it was reduced to such a situation, as to be fit for nothing but to become a private perquisite in the hands of Mr. Hastings, to be granted to whatever peculators he pleased. That government having vanished, the English government succeeded, in which Mr. Hastings, first as president, appointed by the Company, and afterwards as governor-general, nominated by act of parliament, had the principal share. It is for crimes committed in these two stations that he now stands before your lordships.

My lords, after passing over that vast period, that troubled period, between the year 1760 and the settlement made in 1774, and having placed the government in Mr. Hastings's hands, we are to consider how he comported himself in that situation: and the first thing for us to have will be some test by which to try his conduct; for Mr. Hastings will conceive that a British governor, sent abroad, is sent to provide for the good of the people as much as possible, in the spirit of the laws of this country, on which, in all respects, their conservation, their happiness,

and their prosperity depend. These are the principles on which he is to account for his conduct. The rule by which your lordships are to try him is this:—What a British governor, acting upon British principles, in such a situation should do, or forbear—whether he has done, or whether he has forborne, in the manner a British governor ought to do and to forbear. If he has done his duty he will be honourably acquitted. From this country he goes to another for principles and examples. But this country will force him to be tried by its laws. In this country the law is not acquainted with that known crime called misconduct in office. It may not be tried in inferior courts. Here you are competent to any thing. If you are competent to proceed, you are competent to the knowledge of the offence. And here, my lords, I am directed to state to you the principles on which Mr. Hastings declares he has conducted his government, which he has asserted, first in several of his letters to the East India Company, and next in a paper called his Defence, delivered to the House of Commons. I am desired to say, that if those grounds of defence are good, undoubtedly there is a great alleviation of his guilt, if not a taking of it entirely away. If those grounds are not good, we claim to contend, that Mr. Hastings, being a British governor, ought to govern as a British governor, not by British forms; for if there ever was a case in which "the letter killeth but the spirit giveth life," it is this case: we call for the spirit of equity, of justice, of protection, of lenity, which ought to characterize every British subject in the exercise of power; and you know no other principles. And should he be tried, which he has desired to be *in* his Defence, and should say, that actions, if tried in Asia, do not bear the same moral qualities that they would do if tried in Europe, I am called upon positively to deny the position. By saying so we are to let you know, that this gentleman has formed a geographical morality, by which the duties of men in public and private stations are not to be governed by their relation to the great Governor of the universe, and

by their relation to one another, but by climates. After you have crossed the equinoxial line, all the virtues die, as certain animals do. Against this geographical morality I do protest, and declare therefore, that Mr. Hastings shall not screen himself under it, because I trust that not a great many words will be necessary to shew your lordships, that the laws of morality are the same every where; and that actions that are stamped with the character of peculation, extortion, oppression, and barbarity in England, are so in Asia, and all the world over. This I contend for, not in terms, but in substance. Mr. Hastings comes before you, he says, not as a British governor; he says he comes as a subah, a bashaw with three tails; he says, "I had arbitrary power to exercise, and I exercised it. Slaves I found the people, slaves they are; they are so by their constitution; I did not make it for them; I was unfortunately bound to exercise it, and I did exercise it." This, my lords, is the plea in bar: but I trust and hope you will not judge him by laws and institutions which you do not know, but by those you do know and understand, and under whose power and authority Mr. Hastings went from England. When your lordships shall hear what we have heard, and know what we have known, I am confident that you will join with the Commons in their detestation of such doctrine as that of an English governor desiring to be tried as a British subject, and yet declaring that he governed upon the principles of arbitrary power. As this is boldly maintained, and as, no doubt, his conduct was correspondent to those principles, those principles and his conduct are to be tried together. My lords, will you receive this basis of all his defence? It falls to my lot to shew, whether or not a power, or powers, of that nature, ever were delegated to him by any acts of parliament. "I know," (says he,) "that the acceptance of the sovereignty of Benares, &c. is not acknowledged or admitted by any act of parliament; and yet, by the particular interference of the majority of the council, the Company is clearly and indisputably seized of that sovereignty." That if, therefore, the sovereignty

of Benares, as ceded to us by the vizier, have *any rights whatever* annexed to it, (and be not a mere empty word without meaning,) those rights must be such as are held, countenanced, and established by the law, custom, and usage of the Mogul empire, and not by the provisions of any British act of parliament hitherto enacted." I trust, my lords, that you will assert your power over British subjects, asserting or exercising any authorities under any man whatever, whenever he does not exercise them under the sanction of the law. He then proceeds with his Defence, and says, "*Those rights* (and none other) I have been the involuntary instrument of *enforcing*: And if any future act of parliament shall positively, or by implication, tend to annihilate those very rights, or their exertion, as I have exerted them, I much fear, that the boasted sovereignty of Benares, which was held up as an acquisition almost obtruded upon the Company, against my consent and opinion, (for I acknowledge that *even then* I foresaw many difficulties and inconveniencies in its future exercise,) I fear, I say, that this sovereignty will be found a burthen instead of a benefit; a heavy clog rather than a precious gem to its present possessors. I mean, unless the whole of our territory in that quarter shall be rounded, and made an uniform compact body, by one grand and systematic arrangement; such an arrangement as shall do away all the mischiefs, doubts, and inconveniences (both to the governors and the governed) arising from the *variety* of tenures, rights, and claims, in all cases of landed property and feudal jurisdiction in India; from the informality, invalidity, and instability of all engagements in so divided and unsettled a state of society; and from the unavoidable anarchy and confusion of different laws, religions, and prejudices, moral, civil, and political, all jumbled together in one unnatural and discordant mass. Every part of Hindostan has been constantly exposed to these and similar disadvantages ever since the Mahomedan conquests. The Hindoos, who never incorporated with their conquerors, were kept in order only by the strong hand of power. The

constant necessity of similar exertions would increase at once their energy and extent, so that rebellion itself is the parent and promoter of despotism. Sovereignty in India implies nothing else; for I know not how we can form an estimate of its powers but from its visible effects — and those are every where the same, from Cabool to Assam. The whole history of Asia is nothing more than precedents to prove the invariable exercise of arbitrary power. To all this I strongly alluded in the minutes I delivered in council, when the treaty with the new vizier was on foot in 1775; and I wished to make Cheyt Sing independent, because in India dependance included a thousand evils, many of which I enumerated at that time, and they are entered in the 9th clause of the first section of this charge. I knew the powers with which an Indian sovereignty is armed, and the dangers to which tributaries are exposed. I knew, that from the history of Asia, and from the very nature of mankind, the subjects of a despotic empire are always vigilant for the moment to rebel, and the sovereign is ever jealous of rebellious intentions. A zemindar is an Indian subject, and as such exposed to the common lot of his fellows. "The mean and depraved state of a mere zemindar" is, therefore, this very dependance above mentioned on a despotic government — this very proneness to shake off his allegiance, and this very exposure to continual danger from his sovereign's jealousy, which are consequent on the political state of Hindostanic governments. Bulwant Sing if he had been, and Cheyt Sing as long as he was a zemindar, stood exactly in this "mean and depraved state," by the constitution of his country. I did not make it for him, but would have secured him from it. Those who made him a zemindar entailed upon him the consequences of so mean and depraved a tenure. Ally Verdy Khaun and Cossim Ally fined all their zemindars, on the necessities of war, and on every pretence, either of court necessity, or court extravagance."

My lords, you have now heard the principles upon which Mr. Hastings governed that part of Asia which is

subject to the British empire. You have heard the opinion of the man, as to the depraved state of those that are subject to it. You have heard his lecture on arbitrary power, which he states the constitution of Asia to be founded upon. You have heard the appeal he makes to it, and the practice he employs to justify it. My lords, do you really think the nation will endure — that any human creature would bear — to hear an English governor defend himself on such principles — that no man has any security for any thing but by being totally independent of the British government? You may, if you please, (God forbid you should, but I believe you will have little disposition,) believe him, when he asserts that he was a despotic prince; that he could use arbitrary power; and, of course, that all his actions are covered with a shield. Suppose we had been allied with Russia; that we had made conquests in Crete, or Peloponnesus; and that a governor coming from that country, should say, "such a bashaw with three tails did so before me — such a bashaw took bribes with both his hands — I know nothing of the constitution of Asia but from its practice." Will you ever hear the rights of mankind made subvervient to the practice of government? It will be your lordships' duty and joy — it will be your pride and triumph, to teach men, that they are to conform their practice to principles, and not to derive their principles from the wicked, corrupt, and abominable practice of any man whatever. Where is the man that ever before dared to mention the practice of all the villains, of all the notorious depredators, as his justification? To gather up, and put it all into one code, and call it the duty of a British governor? I believe so audacious a thing was never before attempted by man. "He had arbitrary power!" My lords, the East India Company have not arbitrary power to give him. The king has no arbitrary power to give. Neither your lordships, nor the Commons, nor the whole legislature, have arbitrary power to give. Arbitrary power is a thing which no man can give. My lords, no man can govern himself by his own will; much less can

he be governed by the will of others. We are all born — high as well as low — governors as well as governed — in subjection to one great, immutable, pre-existing law, a law prior to all our devices and all our conspiracies, paramount to our feelings, by which we are connected in the eternal frame of the universe, and out of which we cannot stir. This great law does not arise from our combinations and compacts; on the contrary, it gives to them all the sanction they can have. Every good and perfect gift is of God: all power is of God; and He who has given the power, and from whom alone it originates, will never suffer it to be corrupted. Therefore, my lords, if this be true — if this great gift of government be the greatest and best that was ever given by God to mankind, will he suffer it to be the play-thing of man, who would place his own feeble and ridiculous will on the throne of divine justice? It is not to be overturned by conquest; for by conquest, which is the more immediate designation of the hand of God, the conqueror succeeds to that alone which belonged to the sovereign before him. He cannot have absolute power by succession; he cannot have it by compact; for the people cannot covenant themselves out of their duty to their rights. If any, by conquest, by compact, or by succession, exercise power which, for the good of mankind, ought never to exist, those who gave that power, and those who receive it, are alike criminal; and there is no man that is not bound to resist it, and who ought not so to do. Nothing but the fear of greater mischief, and the apprehension of absolute destruction, can justify men in the usurpation or endurance of it, much less justify those that sit in the seat of justice. For law and arbitrary power are at eternal hostility. Name me a magistrate, and I will name property; name me power, and I will name protection. To speak otherwise is blasphemy to religion; it is contradiction in terms. We should be brought back to our original situation; we should be made to know ourselves, as men born under law. He that would substitute will in the place of law is a public enemy to the world; therefore, my lords, against law, no power

can be set up. I know from whence this idea of arbitrary power has come. It comes from a gross fountain. It does happen that the supreme power in every country is not subject to prosecution. It is so in all governments. The king of this country is undoubtedly unaccountable for his actions. If the House of Lords should abuse their power, and give the most iniquitous judgment, for the sake of obtaining popular favour, or of avoiding sovereign displeasure, there is no way of calling them to account for it. If the House of Commons had been guilty of so scandalous an iniquity as not to have prosecuted those crimes and those principles which we now stand forward to accuse, they would not be accountable for their conduct in any ordinary way; because it is one of the perogatives of the supreme power. But are they less criminal? Is it less rebellion against the Divine Majesty? Are they less hateful to men? My lords, they are not.

My lords, Mr. Hastings claims an acquittal at your hands; Mr. Hastings is to have the advantage of council. God forbid he should not have them! but, then, the people under him are to have none of those advantages. How can any man dare to say, that the people below are to have no laws, no rights? I now declare, that as no government ever had arbitrary power, it cannot delegate that power to any person under it, so as not to leave him accountable upon the principles on which it was given. Would not this be a contradiction in terms? Let me say, for the honour of human nature and for the glory of England, that we have better institutions for the preservation of the rights of man than any other country in the world. Yet I may boldly assert, that no nation on the face of the earth has ever meant to delegate this power. The oriental governments know nothing of this arbitrary power. My duty has led me to a minute inspection of the subject, and I challenge the whole race of man to shew me, that any oriental governors have a right to act upon arbitrary principles. The Mahomedan government includes the greater part of Asia —the Mahomedan government is a government by law; it

is a law enforced by stronger power than any law that can bind an European sovereign. The law is given by God, and it has the double sanction of law and religion, with which the prince cannot dispense. If any man will produce the Koran to me, and shew me one text in it to the contrary, I will give up my point. I have read those books, and am conversant with the decrees of Asia, in which there is not a word or syllable against it. As the Mahometans have this law, so they have their interpreters and expounders of this law, whom they call men of the law. These men are conservators of the law; and, to secure it against arbitrary power, they are themselves made secure against the oppression of the sovereign, who has no power over them; he can neither touch their rights nor their property. The first thing that a man of the law has, he is secured from and made independent of the sovereign, supreme, executive power.

My lords, to bring the thing nearer home; since we are challenged, since we are brought into Asia, and wrapped up as Mr. Hastings is with his supposed instruments of despotism in Asia, let us look at the government of the Grand Seignior. Is this an arbitrary power? Every one knows, that great, high, and exalted as this abstract sovereign has been made by our prerogative lawyers, (and they cannot exalt him too highly,) he cannot impose a tax, he cannot dispose of the life, of the property, of the liberty, of any of his subjects, without what is called a festa — that he cannot make peace, that he cannot declare war, without the same sentence of the law — so much is he, more than European sovereigns, a subject of strict law. If then, he neither can touch life, nor property; if he cannot lay a tax on his subjects, I leave it to your lordships whether he can be called an arbitrary power. When the gentleman talks of the affairs of Asia, of the first Asiatic sovereign, Mahomet, he is to be told, that that magistrate who has the greatest executive power amongst them, is the person who, by the constitution of his country, has the most restraint upon him by law. How far Asiatic sovereigns have crept out of this — how far corruption has increased, it is not for me to say. The gentleman

says, the practice of Asia he abides by. My lords, there is much blood, there is much murder, there is much false imprisonment, general extortion, peculation, and robbery, to be found in Asia. If the gentleman chuses to go to the iniquitous practice of it — that practice, authorized only by public tumult, contention, war, and violence — he may find as much condemnation in the constitution as violence in the practice. If he disputes the act of parliament, let him quote to me that law to which he means to be subject. And, if any law that he knows can justify his actions, I am not authorized to say I shall give up the cause, but I shall for myself confess, that I have been brought to public shame, and am not fit to bring this charge before your lordships. I therefore say, that strict government consists in obedience to the laws; and that government, by this constitution, more than any other, cannot exercise arbitrary power.—The next question is, whether the constitution of India is composed of arbitrary power, as the gentleman at the bar has thought proper to say. It will be happy for India (though a happiness, he tells you, they never can enjoy,) when the despotic inclinations of the princes shall give way to the milder spirit of the law. Do not you think it, my lords, a most extraordinary thing, that a British subject, exercising authority, should quote the very names of those men who exercised the power which they held by mere force? With regard to the institutes of Genghis Khan, which Mr. Hastings calls arbitrary institutes, it is a book I never saw; he will produce it; it is with him; I have it not; I can say nothing about it. But if we may judge by those institutes that we have, of a descendant of Genghis Khan, there is not a shadow to be found in any part of the book savouring of arbitrary power. I have carefully read every part of these institutes; and if any one can shew me a single word in them in which the prince himself lays claim to arbitary power, I will confess that I have brought myself to shame. My lords, there is no book that contains more noble, more just, more manly, more pious principles, than this book called the

Institutes of Tamerlane. So far are they from promoting this fraudulent doctrine of arbitrary power, that I will venture to say, the chief thing by which they have recommended themselves to posterity, has been a direct declaration against it. The book, my lords, is a legacy left to posterity, by the great Tamerlane. It begins:

"Be it known to my fortunate sons, the conquerors of kingdoms; to my mighty descendants, the lords of the earth; that since I have hope in Almighty God, that many of my children, descendants, and posterity, shall sit upon the throne of power and regal authority; upon this account, having established laws and regulations for the well governing of my dominions, I have collected together those regulations and laws as a model for others; to the end, that every one of my children, descendants, and posterity, acting agreeably thereto, my power and empire, which I acquired through hardships, and difficulties, and perils, and bloodshed, (by the Divine favour, and by the influence of the holy religion of Mahommed, (God's peace be upon him!) and with the assistance of the powerful descendants, and illustrious followers of that prophet,) may be by them preserved. And let them make these regulations the rule of their conduct in the affairs of their empire, that the fortune, and the power, which shall descend from me to them, may be safe from discord and dissolution."

After mentioning many of the maxims, by which he had established the rules of his conduct, he says:

"By justice and equity I gained the affections of the people of God, and I extended my clemency to the guilty as well as to the innocent; and I passed that sentence which truth required: and by benevolence I gained a place in the hearts of men; and by rewards and punishments I kept both my troops and my subjects divided between hope and fear. And I compassionated the lower ranks of my people, and those who were distressed."

I find nothing of arbitrary power, and your lordships, thank God! find nothing of arbitrary power in this book.

"I inquired, (he continues,) of learned men into the laws and regulations of ancient princes, from the days of Adam to those of the prophet, and from the days of the prophet down to this time. And I weighed their institutions, and their actions, and their opinions, one by one. And from their approved manners, and their good qualities, I selected models. And I inquired into the causes of the subversion of their power; and I shunned those actions which tend to the destruction and overthrow of regal authority; and from cruelty, and from oppression, which are the destroyers of posterity, and the bringers of famine and of plagues, I found it was good to abstain. And by laws, and by regulations, I executed every business and every transaction that came before me in the course of my government." *

My lords, I need not enter more fully, I hope, to shew the noble principles of morality, the manly maxims, the resolution to abstain from oppression, and the recommendation to every governor to abstain from it too — all contained in this book, which Mr. Hastings has referred to, and called arbitrary institutes. The morality of the East, my lords, as far as respects governors, is as pure as our own; and I challenge any man to shew me, in any political book, more sound morality than that of this Asiatic governor.

My lords, I am now to shew you what followed when the princes of India deviated into cruelty, when they departed from those maxims of Tamerlane which ought to have guided their conduct. And here I have to relate a matter of fact, attested by a traveller of credit and consequence, which is material to my purpose, since it shews what took place on an occasion when one of the princes of the country had resource to one of those cruel and arbitrary executions, which make us execrate them. God forbid, we should not depend as much on reason, in the manner of our punishments, as in any other

* White's Institutes of Timour. 4to. Oxford, A. D. 1783.

thing; for the unequal punishment of a crime of a moderate nature, is a crime as bad as the instance it punishes. As these anecdotes are curious, and as they go directly to the principles laid down in Mr. Hastings's defence, I beg leave to mention them. The first is the instance of a governor who was punished for venturing to levy a tax without the consent of his master.

"This kan, or governor", (says Tavernier *,) "appeared to me so brave and generous a person, that I was very much troubled afterwards for his being in disfavour with the king, and his death, which ensued. For this kan, finding the walls of the city of Kom, which were only of earth, and the bridge over the river to be out of repair, without writing to the king, of his own head, laid a slight imposition upon every basket of fruit that was brought into the city. Now there are in all the cities of Persia persons who are hired to take an account, every week, what the commodities may be worth, and to take care that no more than such a toll be laid upon any thing; which they tax among themselves, and when they have set the rate, they cause it to be cried at the beginning of every week. Sha Sefi then reigned, it being the year 1632. The king being informed by these people of the impost which the kan had set upon fruit, without his knowledge, was so enraged against him, that he caused him to be brought in chains to Ispahan, where he used him with a strange severity; for at that time the son of the kan stood at the king's elbow, it being his office to give him his pipe and his tobacco, which is a very honourable employment in Persia. When the kan came, the king caused him to be carried to the gate of the palace, in the presence of all the people, and then commanded his son to pull the hair of his father's mustaches by the roots from his skin. After that he commanded him to cut off his nose and his ears; after that to put out his eyes; and lastly, to cut off his

* See Tavernier's Travels into Persia and the East Indies, p. 30. A. D. 1677.

head. When he had done the execution according to the king's pleasure, he commanded him to go and take possession of his father's government, and allowing him an experienced old man for his lieutenant, he sent him to Kom, with these words: 'If thou governest no better than this dead dog has done, I will put thee to a more cruel death than this.'" I quote this passage to prove to your lordships, that whoever were the princes of that country, they were zealous that justice should be administered, even in the levying of the most insignificant tax. This is enough for me. I do not justify the severity of the punishment. My lords, there is another case from the same author — the case of the nazar, or grand master, receiving presents of the people: —

"The people cried out against the nazar, who being a person of low extraction, and advanced to that high dignity in a short time, grew so proud that he contemned all the lords of the court. There was no dealing with him about any business, unless he were first presented; and he paid nobody without making some advantage of it. Every body had reason to complain; yet no person knew how to come at the king to make their complaints. At length they bethought themselves of making their application to two black eunuchs, who had the king's ear in the night. These two eunuchs seeing the king in a good humour one night, let fall certain words concerning the nazar, and his management of affairs, and thence slid into a discourse of his injustice, that caused the people to cry out against him, and speak evil of his government. Now it happened one morning, that the king intending to go a hunting, the grand master, who had always a large train attending him, coming to the king's tent, the meter denied him entrance. About the same time the king came forth, and seeing the nazar, commanded his officers to take off the bonnet from the head of that dog that took gifts from his people; and that he should sit three days bare-headed in the heat of the sun, and as many nights in the air. Afterwards he caused him to be chained about the neck and arms, and

condemned him to perpetual imprisonment, with a mamoudy a day for his maintenance."

My lords, in quoting these passages, it is not that I approve either of one or the other. I do it in order to prove to your lordships the horror in which that government is held, where the governor shall presume to receive presents, or to raise money from the people in a manner contrary to law; and to shew that no eastern governor acts thus upon any principle of the constitution. The doctrine, that in the East there are no laws, no rights, no liberties, is a doctrine which has not only been stated by the prisoner at the bar, but has been disseminated with a wicked activity throughout this country. My lords, as I told you before, every Mahomedan government is a government by law — it does not nor cannot delegate the whole of its power and authority — the Mahometans live under law, as clear, as explicit, as learned, and as well founded as our own. The dewan, or high steward, has the business of all the exchequer causes, to be decided under him according to law: the law of inheritance is under the jurisdiction of the causee, who cannot adjudge without having two muftis along with him; and although there is no appeal, properly, in the Mahomedan law, yet if these two judges do not agree, the cause is sent to what they call the elos. The whole is independent of the governor of the province. All these officers, the causee as well as the muftis, hold their situations, not during the pleasure of the prince, but during the pleasure of the people. This much, I say, for the sake of the principles of law and the constitution of the Mahomedan government. My lords, I say, that Mr. Hastings has no refuge — let him run from law to law; let him fly from common law, and the sacred institutions of the country in which he was born; let him fly from acts of parliament; let him do all this, still the Mahomedan law condemns him; the high magistrates of Asia condemn him, for receiving presents; they condemn him for levying arbitrary fines and impositions. No, let him fly where he will — from law to law — law, thank God, meets him every where — arbitrary

power cannot secure him against law; and I would as soon have him tried on the Koran, or any other eastern code of laws, as on the common law of this kingdom.

My lords, the next thing is, does the Gentoo law save him? The Gentoos have a system of law, accurately written, suited to all the occasions of that people, comprehending a body of equity: they are governed by laws and institutions, having that which makes law good for any thing, a substantial body of equity. I venture to say, that Mr. Hastings finds no authority for his practice, either in the Koran or in the Gentoo law. In short, let him have eastern, or let him have western law, he will find every where arbitrary power, and oppression, and peculation, proscribed more than he wishes them to be. My lords, if it appears, as I hope and trust it will, that there are laws in this country for the regulation of the conduct of governors of distant dependencies, then I say, at any rate, that a British governor is to answer for his conduct, not according to the examples and practice of Asia, but by the laws of England. There is another point, my lords. Mr. Hastings says, he was left to form his rule of conduct on his own practice: when he had taken one bribe, he thought he might take another: when he had imprisoned one man, he thought he might imprison ten others. He justifies himself by the examples and practice of others. But who, my lords, are they? Tyrants and usurpers. He makes the corrupt practices of mankind the principles of his government; he collects together the vicious examples of all the robbers and plunderers of Asia, forms the mass of their abuses into a code, and calls it the duty of a British governor. He first brings to our notice the practice of former usurpers, and at last he comes to his own. He says, "the minister of this empire had, in the various emergencies of his administration, the learned judges of the land, general officers of the first authority and experience, and the merchants of the greatest commercial city in the world, to whom he might apply, and whose opinion he might command, on every doubtful occasion, whether

of law, military operation, trade, or finance. He could not err; whereas I, poor man! sent out while yet but a school-boy, to India, possessed no such professional aids, but had only my own mind for my resources, and minds as little instructed as my own to assist me, and to be the instruments of my measures."

My lords, I venture to say, that such a declaration might, in some measure, suit persons who have displayed a conduct correspondent to this ignorance — humble, modest, unassuming, and hence, possibly, lax and smooth in the exercise of their duty. But bold, presuming, dogmatic, ferocious, active ignorance, is a crime of itself, and aggravates every other crime. Mr. Hastings might well say, I was an ignorant man, and I left some of the commands of the directors unobeyed through ignorance. When he says he never decides better, than when he disobeys an act out of defiance, as he calls it, this is not the language of an ignorant man. But I beg your pardons, my lords, it is the language of an ignorant man; for no man who is not full of bold, determined, wicked ignorance, would ever think of bringing such an example of fraud before you. He tells us that he left Westminster-school while yet a boy. My lords, we have to regret that he did not stay in that school which has been so prolific in lights, both of the church and the law — greatly have we to lament that he did not go to those universities where the doctrine of arbitrary law is never to be heard of — where the true principles of religion and law are taught and practised. We have to lament that this was not the case, instead of going to the school of Cossim Ally Cawn. If he had remained with us he might have made the examples of Cicero, and others, the rule of his actions; but he now quotes to us every name in Asia, notorious for tyranny, barbarity, usurpation, and murder, as examples fit for the imitation of a British governor. But your lordships keep here that great school for the discipline of kingdoms, which teaches governors, if they are ignorant, not to be assuming; if they are assuming, not

to be cruel, barbarous, and ferocious: so that when Mr. Hastings says, that there are such and such examples, he will be shewn that the same laws, the same sacredness of principle, however they may be disobeyed, both in Europe and in Asia, are held and strictly maintained; and that if all Asia were combined in a league of cruelty, usurpation, and murder, the British nation would nevertheless send out a governor to teach it better manners, better customs, and better principles; and if he did not so act, he would be called upon to defend his conduct, upon the pure doctrines of England, and not the barbarous customs of Asia. My lords, I will go further, and say, that there is not a boy in the fourth form of Westminster-school, who has learned our catechism, and the first elements of morality, who, if these articles of charge were read to him, would not know that such conduct is not to be justified.

My lords, there is another point; and Mr. Hastings takes it up as a general rebutter: — Says he, "as to a great many of these practices that I am charged with, parliament re-appointed me to my trust, and if I am guilty they are so." My lords, I boldly say, that the Commons of England are wholly guiltless of this charge: if they had re-appointed him to a great public trust, after they had known of his guilt, they would have been participators with him — the public would have reason to reprobate their conduct, and there would have been great indecorum in the present prosecution. Perhaps, if we had examined as strictly into the conduct of Mr. Hastings as we ought to have done, he would not have been re-appointed. If any one will shew any of those actions with which he is charged to have been known to the House of Commons, we will then take our part of the shame. Since we have known them, we have never ceased to reprobate them — we called him home to answer for them. But, my lords, the plea would not avail him, if the fact were as he alleges; since the greater part of the enormities charged have been committed since his last appointment. But to think of the audacity of a governor to throw in the face of his

country, "You trusted me when you ought not; you are obliged to carry me through; it is your own act!" We reply: "The wickedness was yours; the trust was ours; and if we, in the moment of inadvertency, appointed you when we ought not to have appointed such a criminal, that should have been a lesson to you; but, instead of this, you redoubled all those crimes: you ceased not from the moment of your re-appointment to be guilty of them."

My lords, there remains but one point more on the part of the East India Company. We know, and I trust all the world well knows, that the pardon from the crown cannot bar an impeachment of the Commons: much less can a pardon of the East India Company; though it might involve them in guilt, which might induce us to punish them for such pardon. The East India Company, it is true, have pardoned him, and they ought not to have done it. But as to his acts, they have all been condemned by them, one by one, as they arose, with the utmost severity. There is not one in which the East India Company have not most severely censured him. They have said, We thank you, in the gross, for your good and faithful services. I answer, Yes; if he has performed any, I thank him too; but I do not know them. The East India Company have thanked him for services, and not for crimes. I answer, let them thank him for those services. I am directed to prosecute him for crimes: and when your lordships shall come to examine into the means he has taken with the East India Company to procure those thanks, when their records are every where filled with censures of his actions, I believe you will think it some addition to his guilt, that he has succeeded in the attainment of those thanks.

My lords, Mr. Hastings tells us, that there is also the testimony, in his behalf, of the princes and rulers of India. Assuredly, we might be inclined to receive the testimony of those Indian princes, if we had not unfortunately seen how seals are obtained in that country; if we did not know how those princes are imposed on; if we did not know the abjectness with which they are obliged to suffer, and to give

thanks for their sufferings. I believe your lordships will admit, that there is not, with respect to some of those princes, a more miserable thing, than to say that he has obtained their thanks. I understand he has obtained the thanks of the miserable princesses of Oude; they thank him for leaving them the smallest trifle of existence; and I will venture to say if he wanted a hundred more panegyrics, provided he never again came amongst them, he might have them by dozens. I understand that Rajah Cheyt Sing has made his panegyric too. But, my lords, the Commons of England attack Mr. Hastings neither with panegyrics nor with satire; we attack him with substantial crimes; and when we shall have proved them, you will be induced to think the panegyrics he has procured, either gross forgeries, or most miserable aggravations of his cruelties.

My lords, these are, as I conceive, the general grounds of the case. I have now closed, completely, I hope, the wholy body of history, with which, when I wished to put your lordships in possession, I did not mean to insinuate that many of you were not perfectly acquainted, by previous inquiries; but merely so to open the subject, that your lordships might know the characters against whom the gentleman at the bar acted, and with whom he acted; the particular nature of the circumstances; then the principles and practices which he quotes; the laws and authorities which he refuses, and those on which he relies for his acquittal. Having refuted all these pleas in bar, I here close this part of my labour; trusting that, when I open to your lordships more fully the several crimes with which we charge the prisoner, you will hear me with the same patient indulgence. It was from the sense I felt, that it was a cause of the greatest consequence — a cause the most difficult, the most complicated, that ever was brought before any judicature, that I resolved (perhaps to trouble you, but as it appeared to me) to bring the whole into order. And now I will state briefly the mode of proceeding which the managers on the part of the Commons purpose to

adopt. I mean, first, to bring before your lordships the crimes, as they are classed, as they arise out of one another, and are of the same species of guilt. I shall first shew your lordships, that the crimes of Mr. Hastings had their foundation in that which is the root of all evil, I mean avarice — that avarice and rapacity were the ground-work and foundation of all his other propensities; that he shewed it in putting up to sale the native government of India, in putting up to sale the whole landed interest, in setting up a British governor in the person of his own servant. I shall then shew, that when, from the notoriety of his corruptions, he dreaded the just vengeance of the laws of his country, in order to form a faction, he by means the most abandoned, obtained for himself a party. Next I shall shew you, that he has looked to what he calls his external resources; that he has gone up into the country after having visited Bengal. I shall shew how he has plundered, or attempted to plunder, every one. I shall shew what infinite mischief arose from the treaty of Benares — what was his conduct to the Begums of Oude — what to the landed interest of Oude, first by residents, next by spies, next by British officers; and, lastly, I shall shew you, that he found out one miserable chief, whose only crime was the prosperity of his country, and that him he endeavoured to torture in a manner, the recital of which is revolting to humanity.

Here Mr. Burke concluded his second day's speech, which lasted upwards of four hours.

FIFTH DAY.

Monday, February 18.

Mr. BURKE continued:

My lords, the gentlemen who are appointed by the Commons to manage this prosecution, have directed me to

inform your lordships, that they have carefully and attentively weighed the magnitude of the subject which they bring before you, with the time which the nature and circumstances of affairs allow for conducting it. On the comparison they are apprehensive, that if I should go very largely into the preliminary explanation of the several matters of charge, it might prejudice the trial of the substantial matters in question. We have weighed and considered them maturely; we have compared them exactly, the time with the matter; and we are obliged to do as all men must do, to conform our opinion to the business — to submit affairs to time, and not think of making time conform to our wishes. Therefore I very willingly fall in with what is the wish of the gentlemen, and what I believe the nature of affairs will require; and am ready to come as soon as possible to close fighting; to grapple immediately and directly with the corruptions in India; to bring before you the direct articles; to apply this evidence to the articles. These are the opinions of the gentlemen with whom I act; at the same time they do most perfectly concur with my own: for I am far from desirous of wasting any part of your lordships' time on a matter, merely from an opinion I have of the nature of the business, when at the same time that opinion must militate with the giving to that business its full, proper, and immediate effect; because we are to take care that, on our part at least, no justice may be lost. Therefore, though I originally intended to class the several crimes with which the defendant is charged, to shew their several bearings, and how they mutually aided and grew out of each other, I think I shall be obliged in some measure to abridge this plan, and bring it within a narrower compass. The first thing, therefore, that I propose to shew is, that the whole of the crimes charged upon Mr. Hastings, have their root and origin in avarice and rapacity; that avarice and rapacity led to prodigality of the public money; and that that wasting of the treasures of the East India Company did, by necessity, or pretended necessity, furnish excuse for the government to break its faith,

to violate all its most solemn engagements, and to cast a ferocious aspect on all the natives. I am, therefore, directed only to state to you this day the root of all those misdemeanors, namely, pecuniary corruption and avarice; which was the great material head, and gave rise and primary motion to all the rest of the crimes which we charge him with. This head of pecuniary corruption pervades so entirely the whole of his conduct, that there is not an article of the impeachment, in which tyranny, malice, cruelty, and oppression are charged, which does not at the same time carry evident marks of this corruption. On Saturday last I stated to your lordships the principles on which Mr. Hastings governed his conduct in India, and upon which he grounds his defence; which may be all reduced to one short word, arbitrary power. If that gentleman had contended, as all the rest of the men in the world contend, that the system of government which he professed and upon which he acted, was a good system, tending to benefit mankind, something might be said to colour so wicked a scheme; something might be said to qualify the acts. It is something singular that he takes care to inform you that he was not blind to the consequences; and in his defence before the House of Commons, that very system that appears to himself a system pregnant with a thousand evils and a thousand mischiefs, he lays down as the foundation on which his administration was conducted. The next thing that is material in his principles, is, that when he is engaged in a wicked system, a system which absolutely leads to evil consequences, he thinks himself bound to realize all the evil consequences that spring from that system. Any other man would say, I have been engaged in such a system, but I have taken care to qualify, by my own virtues, the evils of the constitution; but Mr. Hastings foresees the evil, considers not only the necessary and proper, but the abusive consequences of it, the corrupt consequences of it, and then he conforms his conduct to that system. Now, one thing in the charge respecting banyans, is corruption. Mr. Hastings foresaw it. An arbitrary system must always be a corrupt one. There never was a

man who thought he had no law but his own will, who did not also find that he had no ends but his own profit. We say that Mr. Hastings governed corruptly; that is to say, that he gave and received bribes, and formed a system for that purpose. We say that he did not only receive and give bribes accidentally without any scheme or design, merely as the opportunity or the importunity of temptation incited, but that he formed schemes and plans of government for that very purpose. This system is such a one, I believe, as the British nation, in particular, will disown; for if any one thing distinguishes this nation eminently above another, it is the dignity attached to its offices, from this, that there is less taint of corruption in them; so that he who would, in any part of these dominions, set up a system of corruption, and attempts to justify it on the score of utility, that man is staining, not only the general nature and character of office, but he is staining the peculiar and distinguishing glory of this country. My lords, I shall shew that in his judicial and official character, Mr. Hastings has stained it. There are undoubtedly many things in governments that make them fearful and odious; but bribery, peculation, and guilty hands are things that have always been denominated low, base, and contemptible. It is certain, that even tyranny itself may find some specious colour, and may appear even as a more secure and rigid execution of justice: religious persecution may shade itself under the guise of a mistaken and over zealous piety: conquest may cover itself with its own laurels, and induce a man to imagine that future benefits will make amends for the present exigency: but nothing can excuse money; there is pollution in the touch. There is pollution in that government which makes nothing but money its object. What are the merits which Mr. Hastings has pleaded? That he corrected the abuses, or prevented the evils of an arbitrary government? No such thing. What he contends for is, that he squeezed more money out of the inhabitants of the country than any other man could by any other means have done. These, my lords, are his merits;

his very merits are nothing but merits of money; money got by oppression; money got by extortion; money got by violence, from the poor or from the rich. There is breach of faith, cruelty, perfidy; yet the great ruling principle of the whole is money. His acts are acts, and his government a government, of money. It is base avarice, which never can look, by any prejudice of mankind, any thing like virtue. To his employers, the Company, he says, You have got a large sum of money from the people, and you may leave them to be governed as they can. If he has at any time taken any money from the inhabitants of the country, he does not pretend he has increased their zeal and their affection for your cause, or made their subjection more complete. Very far from it. In short, money is the beginning, money is the middle, and money is the end of his government.

Having said thus much as to the origin and first principle of what Mr. Hastings considers as his merits, but what I call his demerits, the next step will be for me to lay open to your lordships, as clearly as I can, what the sense of his employers, the East India Company, and what the sense of the legislature itself, has been upon those merits or demerits. My lords, the Company, knowing that these money transactions were likely to subvert that empire which was first established upon them, did, in the year 1765, send out a body of the strongest and most solemn covenants to their servants, that they should take no presents from the country under any description, except those which were publicly and openly taken for the use of the East India Company, namely, territories or sums of money which might be taken by treaty; and they distinguished the sums, because undoubtedly in that state, and in every state, there may be subsidy treaties, there may be sums of money to be taken; but they forbad their servants ever to receive, under any name or pretence whatever, any sum of money, without the consent of the Company, and in other cases, without the knowledge of the governor.

My lords, to shew you how radical an evil this of bribery

and presents is, when these covenants went out to India, the Company's servants there refused to execute them; they suspended the execution of the covenants until they had enriched themselves by means of these presents. Whether Mr. Hastings had or had not the example of others to justify his reception of bribes, it is clear that he was sent out to destroy the whole system of bribery; it is clear that the Company expressly charged him so to do, and that they not only reposed a trust in the integrity of Mr. Hastings, but reposed a trust in his remarkable frugality, in the regularity and order with which he conducted his affairs, and which they considered as distinctive traits in his character. But now we behold him quite in another character; no longer the frugal, attentive servant, bred to business, bred to book-keeping; he now knows nothing about his affairs; nay, there are people who tell us they know better than he does what his affairs were. He may be a Newton or a Herschel in affairs of astronomy, but of the knowledge of the affairs of this world he is quite ignorant. It was from the idea of his incorrupt integrity that the East India Company appointed him. Since that he has thought proper to justify himself, not by clearing himself from the charge of receiving the bribes, but by saying, that no grave consequences can arise from his having so done. These, my lords, are pretexts which I leave to others to reconcile as they please, and pass on to what the act of parliament did. My lords, the East India Company not only sent out instructions, very severely reprehending their servants for a moment's delay in executing the covenants; but they went a step farther, and got a commission to inforce that doctrine. Still stronger; that commission had this necessary charge given them, never to receive presents. The Company never sent out a person to India without commanding presents not to be received; and recognizing this as an essential principle. How any one can encourage that by example, which by precept he is bound to restrain, it is not for me to determine. Another commission was preparing to be sent out with the same

powers which you see the act of parliament gave Mr. Hastings. My lords, every office of trust in its very nature forbids the receipt of bribes. Mr. Hastings was forbidden it, first by official acts, then by covenant, and, lastly, by act of parliament. This has formed, as it were, the sphere of the practice of his government. Mr. Hastings did consider that indirect ways of taking presents, the taking them by others, directly in the same manner as if they had been taken by himself. This, indeed, is more dangerous, because it adds to the crime the false mode of conceiving it, and makes it more mischievous by admitting others into a participation of it. And one of Mr. Hastings's general complaints is this, that he is made answerable for the acts of other men. My lords, all those who enjoy a great trust, all those who undertake to regulate the affairs of an empire, are, and must be, responsible for the conduct of other men, so far as they have any thing to do either with appointing them, or retaining them in their situations. Mr. Hastings was not only bound to prevent it, but there was a special order given him to inspect certain great departments of the state, to watch them narrowly, and observe that they did not transgress the line of their duty. He took upon himself to remove persons from their situations, and place others of his own recommendation in their stead, and thus became doubly responsible. We shall, however, prove to your lordships, that the persons he so appointed were persons of notoriously evil characters and principles, and that their characters and principles were perfectly well known to him as well as to the rest of the world.

My lords, governors cannot, by their own single pair of hands, receive the bribes; they must have as many hands as one of the idols in the Indian temples, to receive all the bribes that eastern governors have to receive. Mr. Hastings has had various white agents; but he has had many more black agents; for, be it remembered, that white men are more licentious with their tongues than black men; that black men are very secret as to mischief; that they

are not apt to have very quick resentments; that they have not the same liberality, the same bluntness of language which characterizes Europeans. Therefore Mr. Hastings, who will not, he says, be responsible for the acts of other men, has had his black agents — not one, nor two, nor three, but many — disseminated through the country; no two of them acquainted with the secrets of each other. He had his white agents also, one of them is Mr. Larkin, who was accountant-general, and Mr. Croftes, who was sub-treasurer; these were the last persons in the world to be agents, where there was to be any receipt of bribes. The instances were few, where two men were in the secret of the same bribery; but there is one part of a single bribery committed to one black secretary, and another to another; so that it is almost impossible to make up a complete body of the scattered limbs of all his briberies; but you may pursue them, and may find the scattered limbs, some here and some there; and by that means he hopes to escape the prosecution of them all. My lords, when Mr. Hastings went to Bengal, in the year 1772, the first of his acts was the most bold and extraordinary that, I believe, ever entered the head of any man; I will say of any tyrant. It was nothing less than a general exceptionless confiscation of the property of the ancient nobility and freeholders of Bengal; he put it up to a pretended public, but in reality to a private corrupt auction; landholders were obliged to consider themselves as not any longer proprietors of the estates, but were recognized as mere farmers under government, those few that were permitted to stay.

I shall say nothing either of the circumstances of the purchase, or of the rights of the people to their property, till that great question, the greatest of all which we shall bring before your lordships, shall be brought before you particularly as an article of charge. I only take it in now as a part of the great system of corruption. When the ancient nobility, (a nobility, perhaps as ancient as that of your lordships, and a more truly noble body never existed

in that character,) all the gentlemen, all the landed freeholders of the country, had their estates in that manner confiscated, or delivered over to the farmers. Undoubtedly, certain public good was pretended for this dreadful act of tyranny. The pretence was, the augmentation of the revenues of the Company. It had been found that the oppression and violence of the Tartars did not take money enough from the landed interests of the country; and therefore the mode was discovered of confiscating estates, and of letting them to the farmers, for the purpose of making an estimate how much it was possible to let them for, and then put them up to this private corrupt auction. The first consequence was, that these farms fell, for the most part, into the hands of the banyans of the Company's servants, and their delegates; the banyan of Mr. Hastings himself, Cantoo Baboo, obtaining, contrary to an express regulation, farms which paid a revenue of 150,000*l.* a year to government. The second consequence was, that at the end of five years there was a defalcation of this exacted revenue, amounting to no less a sum than 2,050,000*l.* Hence arose a new source of corruption, in the remission and compositions that were necessary to be made of that immense debt; for every man who had engaged in these transactions was a debtor to the public, and dependant upon the mercy of the lieutenant-governor, who by that means was able to exact the last shilling, and there never was a doubt raised in the minds of mankind, but that immense fortunes were made. This will account to your lordships for the manner in which these stupendous fortunes have been made so fast by a tyrannous exaction, by a sale of the people; by either offering them to continue in possession of their land, under the appellation of farmers, or afterwards taking other sums for the relaxation of their debts. But when I tell you that these miserable exactions were performed through the agency of the farmers of the revenue, your lordships will be so good as distinguish them from the farmers of land. Undoubtedly, you would naturally expect to find the men in the several coun-

tries, who had the most interest, the most competence, the greatest wealth, and the greatest revenue, put in the place in which they were. No such thing, my lords; they were almost all of them Calcutta banyans: they received their allotments, they next delegated them to others, and they again to others, *ad infinitum*. Many of them never saw the farms; and thus, various gradations and successions of black tyrants were scattered throughout the country. Your lordships are too wise, too grave, too discerning, to make it necessary for me to say any thing more on this subject. I need not say more. There is, however, one character to whom I have slightly alluded, whom it is impossible for me to pass by without a few words. My lords, every one has heard the name of this banyan, Cantoo Baboo, a name well known in the records of the Company, for receiving gifts, gratifications, and presents. One would imagine that Mr. Hastings would at least have kept him out. To give a colour to the public, and the East India Company, that his whole system of pecuniary corruption and oppression was carried on solely for the benefit of the Company, an express order was made, that no person in office should have a share. But notwithstanding this order, Mr. Hastings gave farms to his own banyans. You will find this Cantoo Baboo the farmer of great, vast, and extensive estates. My lords, there was another regulation, that no farmer should have, except in circumstances particularly marked and described, a greater farm than that of 10,000 acres to govern. Mr. Hastings, who had broken the first regulation, by giving any farm at all to his banyans, finding himself bolder, broke the second, and gave to his own servant, farms to the amount of 13,000 acres. Great men have been under the dominion of their servants, as we all know, sometimes; but never justifiably; always weakly. We know enough of the weakness of human nature, to know that a domestic who has served you long, and in your opinion faithfully, contracts an intimate relation, which makes him dear to you. Was this the case of Cantoo Baboo? My

lords, he had not been above twelve months in the service of Mr. Hastings; so that he never could have contracted any esteem for him, any kind of particular friendship, connection, or attachment; if any man could do so for such a character as a banyan; for these people do not live in your houses; they are not near you in those very rational engagements in which your servants are useful; they cannot live with you; they cannot eat with your servants; they have no second table: they are not a part of yourselves; they all live at other places, and come at stated hours; their whole connection with you is business. Judge then, my lords, whether it be probable, that two positive regulations were broken, that these outrageous violations of all principles took place, merely for the benefit of this old, grateful, affectionate servant, of one year's standing.

And now, my lords, I come to a scene of peculation of another kind, namely, a peculation by the direct sale of the whole Mahomedan government of Bengal, by the direct sale of the offices of justice, by the direct sale of all the successions of families, by the direct sale of guardianships, or whatever trusts are most sacred among the people: by a sale of them, not as you might imagine, to near relations of their families, but to unfaithful servants of those families, to perfidious servants, who were the means of all their debts. They were put in power over the estates, and over the families, by Mr. Hastings, who will be proved to you to have violated another of the most sacred trusts reposed in him. Those agents, or attornies, who had been sent, and paid to set to rights the affairs of their miserable masters, before the accountant-general, were, by Mr. Hastings, as the reward of their corruptions, put into possession of the very estates of those masters whom they were sent to Calcutta to defend from wrong and violence. My lords, the directors of the East India Company knowing the exceedingly corrupt state of their servants in India, when Mr. Hastings was appointed in 1773 governor-general of Bengal, sent out Mr. Barwell, General Clavering, Colonel Monson, and Mr. Francis,

and gave to them a sacred charge, that, in execution of the spirit of the act of parliament, they should make inquiry into all manner of corruptions and malversations in office. My lords, the gentlemen so sent out executed the trust committed to them in a manner the most exemplary —in a manner that serves as a shield to cover the fair fame of England, whenever the conduct of England, towards India, is called in question. As soon as they arrived, they found that a great murmur was abroad. Shortly after, when the council was put in a state to receive the complaints of the people, they found such a body of corruption, of peculation, in every walk, in every department, in every situation, in the sale of the most sacred trusts, in the destruction of the great families of the country, as never before was unveiled. Upon this occasion one would imagine that Mr. Hastings would have acted with some little management; but there is no part of those general acts of corruption in which the principal figure of the piece, Mr. Hastings, has so acted. All the departments were corrupt. Mr. Hastings was at this time gone upon a voyage; you do not see Mr. Hastings, you see only Cantoo Baboo; you either see the black or the white side of Mr. Hastings. There were other gentlemen visible, too, with whom I have at present no dealings. Mr. Hastings, instead of using any management upon this occasion, instantly set up his own power and authority directly against the authority of the council; against the authority of the East India Company; and against the authority of the act of parliament. He put a dead stop to all these inquiries. He broke up the council whenever they attempted to call it. His daring power increased continually. There was no act of violence that he was not suspected of, in order to put an end to inquiry. My lords, you have all heard, that amongst the accusers of his crimes, there was a principal person called Nundcomar; but Mr. Hastings has himself given, upon the records of the Company, a character of this person. I have not the least inclination to defend either his conduct or his memory. This man, if he

was an accuser of Mr. Hastings, if he was a fraudulent accuser, and a man of bad character, there was this great advantage, that there was no likelihood of any attention being paid to him without caution. But, it seems, he had been an informer before; he had made some discoveries; he had been guilty of that great sin against the Holy Ghost, the discovery of peculation. But he stated facts, and circumstances; the sums of money paid; by whom, and through whom, this species of peculation was transacted: detection, therefore, was easy, and Mr. Hastings would have flown to detection, and would have been glad to have shewn this accuser to be a man of bad character, by bringing proofs of the same. But, instead of doing this, Mr. Hastings broke up the Company's council, by adjourning it. I will not say whether legally or illegally; whether he left no circumstance whereby to apologize for his conduct; but that it was done from a consciousness of guilt, no one can doubt. But this man, this Nundcomar, whom Mr. Hastings dared not meet at the council, he proceeded against in another place. There he thought it necessary to make a charge against him. The British legislature, not trusting solely to the institutions of the governor-general, had sent out a court of justice, for the detection and punishment of any kind of misdemeanor that might appear. Before this court Nundcomar was accused by Mr. Hastings. Instead of meeting the man front to front, he endeavoured to flank him, to go round him; to come on his flank and his rear, but never to meet him in front. On his accusation, he disobeyed his instructions; and if it was no more than for that act of rebellion, it was contended that he ought to be brought to account. Long before Nundcomar preferred this charge, he knew that Mr. Hastings was plotting his ruin, and caused a man to be the instrument of his destruction; and Mr. Hastings proved these papers, charging Nundcomar with this previous plot. By close confederacy between him and the chief justice, we find that the witnesses who appeared there were nearly all persons connected with Mr. Hastings; that they were per-

sons who were employed for him; all the persons who appeared as witnesses and parties had been, both before and since, the particular friends of Mr. Hastings. In short, there was a person there, who, with tears in his eyes, begged of Mr. Hastings to receive 300,000*l.* himself; but the law takes its course. I have nothing further to say; the man is gone—justly, if you please; however it so happened, luckily for Mr. Hastings. Things were all in exact concurrence: Mr. Hastings is accused: his accuser is subsequently accused; but first condemned; and his condemnation saves Mr. Hastings from farther trial. All happened luckily to meet together. His accuser was supposed to be, what he might possibly be, an accomplice in guilty acts. All I can say is, that he was in the situation of giving bribes, and Mr. Hastings was afterwards proved to have received bribes. I shew the criminal tendency and mischievous nature of those acts, and the means of eluding punishment for them. I am now giving you that general view which may serve to characterize Mr. Hastings's administration in all its parts. Such was the nature of the people of that country, that, not knowing how to distinguish the limits of exact justice, they, some how or other, conceived that the attempt to accuse Mr. Hastings was destroyed with Nundcomar. But, my lords, if Mr. Hastings intended to have made a proper and a decent use of the transaction, would he not have said, "The man has been justly taken away who accused me of these crimes and enormities, but as there are other witnesses, let the inquiry proceed?" Was it fit, my lords, that a governor should stand with recorded bribery upon him, when it was in his power to do it away? Therefore, I charge upon him, that not only did he suppress the inquiry to the utmost of his power, whilst the witness lived, but that afterwards, in no one instance, did he endeavour to wipe off that shame. I charge upon him, that he went further; that he never denied any one of these charges.

My lords, Mr. Hastings, when he had got rid of this business, by the providential execution of Nundcomar, one

of his accusers only, (I wish that to be understood,) he promised the court of directors a full explanation of the whole transaction; which explanation he never gave them. Says a man, I am threatened with a suit in a court, the explanation required may hurt me in my defence; this may be a very good excuse in a common cause, but a man accused of bribery, who, instead of defending himself, says, I will adjourn it over for seven or eight years, joins his promise to his employers, with what is tantamount to a denial of his promise. Mr. Hastings was providentially freed from Nundcomar, one of his accusers, and as fortunate events do not come alone, it so happened, that all the rest, or a great many of them, ran away; no new ones came in, and Mr. Hastings enjoyed the happy repose which branded peculation must leave on the mind conscious of its own guilt. It is, undoubtedly, the duty of a great, a virtuous, and a firm mind, to despise vulgar calumnies; but there is no case in which it becomes an honest man, much less a great man, to leave on record specific charges against him, without taking any steps to refute them.

Soon afterwards very serious inquiries commenced, in the House of Commons, into the peculations of the East India Company's servants. Mr. Hastings knowing this, and having reason to apprehend that these inquiries which had begun on the coast of Coromandel, would at last reach Bengal, determined to change his whole plan, and attempted to conceal the enormous bribes he had been in the habit of receiving. Accordingly we find him paying large sums of money into the public treasury, through the means of his deputy treasurer and accountant, and taking bonds for them as money of his own, for which he was intitled to receive interest. This, my lords, was his first mode of endeavouring to conceal the bribes he had taken; but at length, when he found that further concealment was impossible, he wrote home to the court of directors, stating that there were certain sums of money which he had received that were not his own, and that he had

received them for the use of the Company. My lords, Mr. Hastings is a very ingenious man; but I believe there is a little defect here. Before he was considered as a peculator, he did not pretend to apply these sums to the public service: he stood on the defensive, and used all the means in his power to prevent inquiry. The first was a bold, ferocious, direct attempt to use his power for purposes of peculation; but as soon as he is detected, he holds himself with a firm, dignified, and steady countenance, and says, I am not here as a delinquent, as a receiver of bribes, deserving of punishment; no, I am a great inventive genius; I have gone out of all the ordinary modes of finance; I have received bribes, it is true; but I have received them for your benefit. This bold, inventive, daring genius, this patriotic briber, this public peculator, does in this way, as he would have you believe, contribute his private mite towards the public benefit. It is said, my lords, that ambassadors are persons sent abroad to tell lies for the benefit of the country. Mr. Hastings, it seems, has taken bribes for that purpose. The moment any person begins to discover a bribe, "go about your business," says Mr. Hastings; "do not inquire about my actions." That man is ruined for being informer; that man is brought to distress; he loses the favour of the governor-general; he loses the favour of the East India Company too. The governor received bribes and extorted money; but then it was all for the good of the Company!

Now, my lords, what I am about to state may appear very singular, rash, absurd, and wild; but, thank God, guilt is never rational; it disturbs all the faculties of the mind, and leaves a man no longer the free use of his reason. It puts him into that condition, which, as all those who are used to our courts know, has been the cause of the detection of half the criminals in the world. My lords, God forbid that prudence, which is the supreme guide, and indeed stands the first, of all the virtues, should ever be the guide of vices. I am to tell you, that when Mr. Hastings makes this sort of discovery to the

court of directors, he never tells them who gave him the money, nor on what occasion, or by what hands it was given, except in one instance. First, I am to remark, that the accounts given of this money are totally false and contradictory. There wanted nothing more than this to enable us to judge of the transaction, whether it was fraudulent or not. That was enough; there is a strong presumption that the transaction is bad, when the account given of it is false. Mr. Hastings being called to an account by the court of directors, was asked, how he came to take bonds for this money, if it was not his own? How he came to vitiate and corrupt the records of the Company? Says he, "I really cannot tell; I forget"—the distance of time not so long as two years—"It might be to prevent the curious at Calcutta from being acquainted with the proceedings of the state. I ought not to be pressed now for an account of motives which I no longer remember, and of which I cannot give any account, as my papers are in India." It is somewhat remarkable, that Mr. Hastings's answers on this head varied with his situation. When in India, he could give the court of directors no satisfaction on this business because he was not in Europe. When he came to England, without entering into all his contradictions, (that will be another day's business,) he tells us, he had left all his notes and references behind him. He sends a letter to Mr. Larkins, the bribe agent and broker on this occasion, to give that account of this affair which he was not able to give himself. Thus he endeavoured to charge the treachery of his administration to the treachery of his memory.

Now observe, my lords, here is a man taking money corruptly; here is a man committing bribery; giving false security for it to cover it; called upon to tell where he got it from, and on what views and occasions: he neither will tell in India, nor can tell in England; but sends you over such an account as has been never heard of. And here begin the effects of these bribes, corruptions, and peculations. I am first to state to you the great instruments,

the great engine, which he used, to lay all the people in the country under contribution, to bring the whole into subjection, and to put himself as much as possible out of the way of the discoverers of bribes. Peculation, my lords, slept for some time, whilst Mr. Hastings had a majority of the council against him. But General Clavering and Colonel Monson having been removed by death, and Mr. Francis, harassed and tired of his situation, having resigned, the whole council then consisted of himself and Mr. Wheler. Mr. Hastings had the casting vote, and therefore there was no need of introducing this gentleman —Mr. Wheler was, however, gained over, perfectly compliant. I enter not into the causes of it — the man is dead — the business is over; but from him Mr. Hastings met with no opposition, and if he had, such opposition would have been vain.

My lords, six provincial councils were established by the governor-general, for the collection and management of the revenues. These councils had, in the opinion even of Mr. Hastings himself, so well answered the end of their institution, that though they had been constituted only for a time, and for the purpose of experiment, he thought they ought to be made permanent. These councils had been established in November 1773. In the year 1774, Mr. Hastings earnestly offered his advice to the governor-general and council, (then newly established by act of parliament) for the continuance of the system of provincial councils in all its parts. In April 1775, he transmitted to the directors a formal plan for the future settlement of the revenues, and declared at the same time, that "with respect to the mode of managing the collection of the revenue, and the administration of justice, none occurred to him so good as the system which was already established of provincial councils." On the 18th of January 1776, he dispatched to the court of directors a plan for the better administration of justice; and in that plan he had specially provided for the permanent establishment of these provincial councils; and he not only recom-

mended it to the directors to confirm that establishment, but also to apply to parliament, and procure for it the sanction of the legislature; nay, he went so far as to transmit to the court of directors, on the 30th of April, the draught of an act of parliament for the better administration of justice in the provinces belonging to the Company, in which there was a special provision for the establishment of provincial councils, and special jurisdiction was assigned to each of them. My lords, one might have imagined, from all that Mr. Hastings had said and written upon this subject, that the establishment of these councils, as far at least as depended upon him, would have been made permanent; but on a sudden he changed his mind, and in a letter to the court of directors, dated the 5th of May 1781, he affirmed, "that the plan of superintending and collecting the public revenue of the provinces, through the agency of provincial councils, had been instituted for the temporary and declared purpose of introducing another more permanent mode by an easy and gradual change." Here Mr. Hastings had completely abandoned in one moment an opinion which he had recommended to the court of directors for near eight years successively; and though he himself had drawn up the plan of an act of parliament to confirm in perpetuity the establishment of these provincial councils, yet he had the face afterwards to tell the Company, that "it had at first been adopted for the temporary and declared purpose of introducing another more permanent mode by an easy and gradual change." Here again the prisoner shewed that he never could adhere to one opinion; for instead of introducing a change by degrees, he suddenly abolished all the provincial councils, without having found any fault with them; nay, just after he had himself pronounced a panegyric upon them; and in their room he established one single council, under whose management was placed the administration of the whole revenue of the kingdoms of Bengal, Bahar, and Orixa: this council was to be supreme in points relating to the

revenue, and consequently independent of the governor-general and his council.

My lords, it seems very odd, that a man like Mr. Hastings, who loved power and patronage, should thus place both beyond his own reach; and so it would, if he had done so in reality: but this was not his object; he wanted to make this council independent of the supreme council in future, and dependent solely upon himself: he did not wish to trust to another thwarting majority in his own council; and therefore he was determined that there should be no connection between the one and the other. This new council he composed entirely of his own creatures and favourites; but as it was necessary that these gentlemen should have for their dewan or secretary some native acquainted with the laws and customs of the country, a person who could communicate between them and the country government, such an agent was given to them by Mr. Hastings — a man that you will often hear of — a name at the sound of which all India turns pale — the most wicked, the most atrocious, the boldest and most dexterous villain that that country ever produced. There never was a friend — there never was a foe of Mr. Hastings — there never was a human being that differed in their opinion of Gunga Govind Sing, the friend of Mr. Hastings, to whom all the authority below and all the authority above was delegated. I hope and trust your lordships will allow me to state, from the report of the council themselves, the nature and importance of this office of secretary. My lords, they assert that the whole power — a power of the most alarming and terrible nature — centred in this man, and that the council, with the best abilities and intentions, were, after all, little better than tools in the hands of their dewan. He pried into the secrets of families; he availed himself of the knowledge of those secrets; and he thereby had it in his power to lay the whole country under contribution. Now, my lords, you have here the opinion of the council itself; you see what they are made for; you see the executive power was

destroyed; you see that the delegation by Mr. Hastings, of all the English authority, both above and below, judicial and civil, was given to this Gunga Govind Sing. The screen he put before the public, the veil, was thrown open, and Mr. Hastings uses the names and authority of the English to make them tools in the hands of the basest, wickedest, corruptest, the most atrocious villain that ever was heard of. My lords, you have heard that the provincial councils were destroyed. Did Mr. Hastings pretend to say that he destroyed them for their corruption or insufficiency? No such thing. He declares he has no objection to their competency, no charge to make against their conduct. The provincial councils were then destroyed; forty English gentlemen were removed; the whole administration of the country was overturned; the East India Company were burdened with pensions for the persons dismissed, and with 62,000*l.* per annum, for the newly appointed council, and all for the purpose of establishing Mr. Hastings's friend Gunga Govind Sing.

My lords, the character of Gunga Govind Sing was known to Mr. Hastings before he appointed him secretary to the new council. Mr. Hastings knew the public opinion of the man. "It is true," he said, "this Gunga Govind Sing is generally spoken ill of; but nothing particular that I know of is laid to his charge; no body denies him to be a man of abilities, and for that reason I employed him." Now, my lords, if any thing ought to have hindered Mr. Hastings from putting any, much less the whole trust of the government of Bengal, in one man, it was that he was not a man of integrity, or reputed so to be. Mr. Hastings, however, does not mind the general estimation in which Gunga Govind Sing was held: he knew he had been turned out of office by others: he knew he had been turned out, for reasons assigned on the record and approved by the court of directors, for malversations: he had, nevertheless, crept in again, and for malversations they were on the point of turning him out again, when Mr. Hastings saved them the trouble, by turning him out: so

that he was known to be a man of notoriously bad character. Permit me, my lords, for one moment to drop my representative character here, and to speak to you as a man much conversant in the world, as a man much acquainted with men and manners, in active life, and amidst occupations the most various; and, from that experience, I now profess, that I never knew a man that was *bad*, fit for any service that was *good*. It is not in their nature. Their minds are distorted by following the corrupt artificial means of accomplishing their own selfish ends. Out of that track, they are poor, dull, helpless, resourceless creatures. Their faculties are benumbed on that side. They are quite paralytic. There is always some disqualifying ingredient mixing with the compound and spoiling it. Their muscles have lost their very tone and character: they cannot move. In short, the accomplishment of any thing good is a physical impossibility in such a man. There is decrepitude as well as distortion. He could not if he would, is not more certain than that he would not if he could. These men know nothing but how to pursue selfish ends by bad means. Therefore I say, my lords, no one ever employed a bad man but for bad ends. Mr. Hastings knew the man intimately. There may be situations, perhaps, in which such a man might be employed; but who, except Mr. Hastings, would have dreamt of putting the whole kingdom and the whole council into such hands? If the idea of a virtuous discharge of the duties of his office had in any degree entered into the plan or intention of the prisoner, he never would have placed such a man in a situation, in which the natural disposition of his mind to wickedness would have full scope for action and gratification. My lords, the council that had been appointed to act as the tools of Gunga Govind Sing, or rather of Mr. Hastings, formed no inconsiderable branch of the civil establishment of Bengal; for the salaries of the members amounted to 62,000*l.* a year; a sum nearly equal to the united salaries of the governor-general and the members of the whole supreme council of Bengal. It was not for the

service they did the country, that the members of this new board of revenue received so profuse an allowance; for it was not intended that they should do any thing; their salaries were intended rather as douceurs to bribe them to silence, than to stimulate them to activity in their department: — they were to enjoy repose; and all that was expected of them was, that they should not interfere with the plans that Gunga Govind Sing might occasionally adopt in the collection of the revenue. These gentlemen did not actually receive such instructions when they were appointed members of the council; but they soon perceived that they were only the dignified tools of the governor-general's confidential agent. All they could do was to remonstrate; and in this they acted like men of honour; they fairly stated, and their report, as I before observed to your lordships, is upon record, that they were mere cyphers, and that all the powers of the board were, in effect, vested in Gunga Govind Sing; who, from the nature of his situation, had it in his power to lay the provinces under contribution; and whose inclination to do so was equal to his power.

My lords, we soon find him employed in the way in which he was meant to be employed; that is, in taking bribes and corrupt presents for Mr. Hastings. He had constant, uniform, and, as we shall prove, close communication with the prisoner; and, indeed, we may here be saved a good deal of trouble in proofs, since Mr. Hastings himself, by acknowledging that Gunga Govind Sing was his broker, has pretty clearly revealed the secret. My lords, Mr. Hastings writes to Mr. Larkins, the Company's treasurer at Calcutta, who, in consequence, sends over an account, which comes directly in evidence before you on the subject of these presents. My lords, there are in it a number of presents, which, when they come to be summed up, will appear enormous. It appears that a cabooleat, or agreement, to pay four lacks of rupees had been received, three of which had been actually paid, and one remained on account. We are told that Mr. Hastings received all this. We are told that he received these three lacks through

the hands of Gunga Govind Sing. We are further told, that Mr. Hastings was extremely angry with him for having kept back, or defrauded him of, a sum of 10,000*l.* out of 40,000*l.* Certainly, my lords, it was very extraordinary and very reprehensible in this Gunga Govind Sing, and unworthy of the great and high trust which Mr. Hastings reposed in his integrity, to keep back from him the fourth part of his whole bribe! My lords, we have found the province, we have found the sum of money given, we have found the agent employed, we have found the receiver — The province is Dinagepore, the agent is Gunga Govind Sing, the sum is 40,000*l.*, the receiver is Mr. Hastings. — But who gave this sum to him, or on what account it was given, no where appears.

My lords, as the above-mentioned sum of 40,000*l.* was not an ordinary article of revenue, as it was acknowledged to be a present, without any account being given of the person from whom, or the cause for which it was given, the only way of coming to any conclusion on the subject, will be for me to shew your lordships what was the state of transactions at Dinagepore at that period; an inquiry which will tend greatly to develope the dreadful consequences of that system of bribery and corruption which had been established by Mr. Hastings. My lords, the country of Dinagepore, with its dependant territories, are nearly equal to all the northern counties in England, Yorkshire included, and has a prince at the head, called the rajah or zemindar of Dinagepore. I find that about July 1780, the rajah died: he died, leaving a half brother and an adopted son. A litigation instantly arose in the family, and this litigation was referred to, and was finally to be decided by, the governor-general in council, that being the ultimate authority for all revenue questions. The cause came before Mr. Hastings, who decided the question in favour of Sudermund Sing, the adopted son of the rajah, against his half brother. I find on that decision a rent settled, and a fine paid; so that all this transaction is fair and above board; and I find, along with it, many ex-

traordinary acts; for I find Mr. Hastings taking a part in favour of that minister, Hyder Beg, agreeably to the principles of others, and contrary to his own; and, on his establishing the authority of the minister, Hyder Beg, I find he gave the guardianship of this son to the brother of the wife of the late rajah; and when the steward of the province was coming down to represent his case to Mr. Hastings, Mr. Hastings not only sent him back, (so far from hearing him fully,) but ordered him actually to be turned out of his office. If the present of four lacks of rupees was given in consideration of the judgment in favour of the adopted son, whether the decision was right or wrong, true or false, the bribe was corruptly taken by Mr. Hastings as a judge in a litigation of inheritance between two parties. And what, my lords, on such a supposition, renders the case more flagrant, is, that the present came through the hands of Gunga Govind Sing. He was the person that was to receive it by monthly instalments, and to pay it to Mr. Hastings. The son, too, of Gunga Govind Sing was at this time register-general of the province, and had in his care all the documents upon which the legal merits of the case depended; so that Mr. Hastings takes a bribe from an infant of five or six years old, through the hands of the registrar, whose opinion was to have the whole weight in settling that share that was not a public tribute or fine.—So that, in fact, through the registrar of the country, the keeper of the records, he receives a bribe from a family on a point of judgment disinheriting the brother. I do not say whether the decision was proper or not. I know these questions of adoption are the most curious in the Gentoo law. This I know, that he succeeded in obtaining a bribe through the hands of a man who was registrar-general of the province; and, soon after this, we find other parties concerned. Soon after this we find the man who gave the bribe, and all the officers under him, turned out of their employments, and the guardianship of the infant given to the brother of the wife of the late rajah. Soon after, without any proof, that appears upon record, of mismanagement

or neglect, the guardian was displaced by Gunga Govind Sing, and the rajah put into the hands of a perfect stranger. My lords, I will do Mr. Hastings the justice to say, that if he had known that there was another man more accomplished in iniquity than Gunga Govind Sing, he would have given him the first place in his confidence; but there was another next to him, a person called Debi Sing. He ranked under Gunga Govind Sing. This man, although he had in the transaction of the 10,000*l.* forsook the very shape, rules, and name of virtue, yet Mr. Hastings is to acquit him of this — they were reconciled on this occasion — Debi Sing came into office, superseding all the others. There is an English gentleman, one Mr. Goodlad, whom your lordships will hear of presently. They appointed him, and the first act they do is to cut off a 1000*l.* a month from his allowance, because he is stated to be extravagant, and have a great number of dependants to maintain. In short, all is flutter and bustle: there never was such a tender guardianship and superintendence as that of Debi Sing (always with the knowledge of Mr. Hastings) towards this poor rajah, who had just given 40,000*l.* (if he did give 40,000*l.*) for his nomination to Mr. Hastings.

We now put Debi Sing in possession of the rajah's family, together with the management of his household. The very next step, in the course of ten years, is to give him the farming of the revenues of all the rajah's provinces. It may be said, that the peshcush was not received as a bribe for the nomination of the rajah, but was received as a bribe in office. Which is the best, or which is the worst, I shall not pretend to determine; but it appears most probable, that Mr. Hastings got it from Debi Sing in consideration of this appointment. Thus were the revenues of the rajah given in farm to a man, who, in the universal opinion of all Bengal, was second only to Gunga Govind Sing, a man with whose character Mr. Hastings was perfectly well acquainted, and of whom he has since recorded, that he knew Debi Sing to be com-

pletely capable of the most atrocious iniquities that were ever charged upon man. Now, my lords, though this is a large field, and though it is a thing that I must confess I feel reluctance in mentioning, exhausted as I am at present; yet such is the magnitude of the topic, such the hurtful consequences of superseding all the persons employed, in order to give the country into the hands of Gunga Govind Sing and Debi Sing, that I must go on. As Mr. Hastings avows his knowledge of the character of this Debi Sing; as he tells us that he accepted him as a person against whom no possible objection could be made; it will be necessary for me to state to your lordships who the man was to whom those great trusts and profits were given. My lords, Debi Sing was a person of the tribe of banyans, that is to say, the trading and merchant class of India, and was employed in all those little arts and frauds to get money, which is their business. While Mahomed Reza Cawn, that great man, had the management of all the affairs of state and revenue in his hands, under the Company, Debi Sing paid his court to him with all the assiduity and subtleness which those who have no principle, are very apt to use. When the Cawn was brought down to Mr. Hastings, and ordered, on a strange charge, to Calcutta, Debi Sing lent him considerable sums of money. For this great man was accused of great crimes, and acquitted — 250,000*l.* in debt; that is to say, as soon as he was a great debtor, he ceased to be a great criminal. Debi Sing obtained his interest, and one of the first great concerns intrusted to him was the collection of the province of Purneath. How did he conduct himself in that situation? My lords, he so well acquitted himself in that place, that the province was totally ruined and half desolated. The revenues of this province, under his management, fell, in the first year, from 160,000*l.* to 90,000*l.*, and in the next year to 60,000*l.*; and it was finally so completely ruined and desolated, that a Company of Indian merchants, who had taken it at a reduced rent, when they came to view it, fled in a fright out

of the country, and gave ten thousand pounds to be released from their bargain. This, my lords, was the first opportunity he had of shewing how deserving he was of greater trusts. His corruptions and oppressions were too abominable to escape notice, and, accordingly, in 1783, Mr. Hastings removed this man from his employments, but not from his profits, which he was allowed to retain. Thus stigmatized, he had still the influence to procure the office of high dewan, or deputy steward, to the council of Moorshedabad, the principal of the six provincial councils. This council consisted of young men, who, like other young men of pleasurable dispositions, and especially like young men in India, were willing to reconcile, if they could, the means of acquiring a good fortune with the effects of ruin. Debi Sing took compassion upon them, and undertook to lead them, at one and the same time, through the paths of profit and pleasure. This man possessed, in an eminent degree, the art of pleasing those whom it was his interest to conciliate. It was his study to provide so quick a succession of pleasures, diversions, and entertainments, for the gentlemen who had seats at the council board, that they should not have much leisure to attend to business, or inquire minutely into his conduct. There is, my lords, in that country, a tax much more productive than honourable—a tax upon dancing girls, and other females, who make a profession in India of contributing to the pleasure of the men, without any scruples on the score of modesty. This tax Debi Sing formed; and from among the ladies who were the subjects of the tax, he singled out, with that care and with that ability for which he has been so much commended, those who had the greatest personal merit. The ladies were called "good pearls of price;" "rubies of pure blood," and all those fine names that tended to heighten the general harmony. Debi Sing made frequent visits. He always carried this moving seraglio about with him wherever he went. With them he concerted the plans of new entertainments, which were executed with all the refinements upon pleasure that

Asiatic luxury could devise. His guests were supplied liberally with the choicest music, the finest dancing, the most delicious French wines, the most costly perfumes of India, in short, with every thing that could by possibility add to the luxury of such a scene. This great magician — chaste in the midst of dissoluteness — sober in the midst of drunkenness — active in the lap of drowsiness — watched the favourable moment for the accomplishment of his purposes, and contrived, as if by accident, and not by design, to have papers of the utmost consequence brought to the gentlemen who composed the council, to be signed. Young men, my lords, who are honest themselves; seldom suspect others of dishonest practices or arts; but still less so when their spirits are raised by wine, and the blandishments of women: at such a moment they unsuspectingly signed whatever paper was offered for that purpose; and thus the great ends of these expensive entertainments were fully accomplished; and thus did this keeper of a legal brothel obtain the superintendence of a number of districts, all of which, as he had done before, he grievously oppressed and desolated, incurred large arrears of payments, and in one of these places, for his peculations, he was publicly whipped by proxy. Having thus proved himself a kind protector of the people, a prudent farmer of the revenue, and a sober guardian of the morals of youth, he was chosen by Mr. Hastings as a proper man to superintend the young rajah, to lead him in the paths of piety and virtue, and to have the whole administration of his territories, the collection of the revenues of the great countries of Dinagepore and Rumpore committed into his hands.

My lords, the consequences were such as might inevitably be expected. Debi Sing lost not a moment. One part of his instructions was, that he should not raise the rents, or impose new taxes upon the inhabitants; but such instructions did not weigh much with a man, who knew that if he broke through them, he was sure of impunity. He therefore resolved, by plunder and rapine of every

sort, to make the most of his situation. The first thing he did was to seize on all the gentry of the country, as well as others, throw them into prison, keep them in irons, and oblige them to sign papers, consenting to an increase of their rents. The next step he took, was to lay on them a number of new taxes, which, by his covenant, he was not to have laid. Being thus in prison, he obliged them to give bonds to what amount he pleased, as the price of their liberty. His next step was to seize and sequester the lands that pay no taxes. The demesne lands were accordingly put up to auction, and knocked down at *one* year's purchase, though the usual price of land in that country was *ten*. Whom were they sold to? Your lordships will anticipate me—they were sold to Debi Sing himself, through the means of one of his agents. They amounted in all to the sum of 70,000*l.* sterling a year; but, according to the value of money in that country, they were worth 300,000*l.* a year. These lands so sequestered were purchased so much under their value, that the fee simple of an acre of land sold for about seven or eight shillings, and the miserable wretches received the payment for their lands out of the money that was collected from them. The money was put into a separate collection, and the moment it was paid the rents were raised again, and it was put by as a sacred deposit for himself, or some other person whom Mr. Hastings should appoint. Next was the sale of their goods. These they were obliged to carry to market; and there is here a circumstance that will call loudly for your pity—most of the principal landholders, or zemindars, happened at that time to be women. The sex, my lords, in India, are kept in a constant state of imprisonment; nevertheless, from the sanctity in which they are held, they are guarded with all possible attention and respect. No hand of the law can touch them; but they have a custom of sending family bailiffs, and family serjeants into their houses; and accordingly such persons came into the houses of these zemindars, and made themselves masters of them. The men

and women all fled. All the charity lands were sold at the same market: all that the affections of their ancestors had provided to maintain the poor and helpless, was sold before their faces at that same market. But this, my lords, is not all; there were things yet dearer to them — the poor consolations of imagination at death, for all the substantial miseries of life. There were lands set apart and destined for the burial grounds of the owners. How dear these grounds are to all the people of India, it is needless for me to say. But, by the tyranny of Debi Sing — a tyranny more consuming than fire, more greedy than the grave — these lands were sold also. This was to them, from the nature of their education and religion, the most heart-rending of all their losses. But, my lords, this was not all. This was the manner in which all the principal gentry, all the secondary gentry, all the women, and all the minors were disposed of. What was the situation of the poor men, of the yeomen? I say their situation is ten thousand times worse, if possible — if there are degrees of utter ruin. They were driven like horned cattle into the common prison, and there they were obliged to sign, as the principal zemindars had done before — they were obliged to sign recognitions of their ruin — they were let out only to their destruction. There were such an incredible variety of new taxes every day, that they were obliged to sell almost all the corn of the country at once. It happening to be a year of fulness, and the markets overloaded, their crops did not sell for above one-fourth of their value; so that being overloaded with taxes they came to the next resource; they were obliged to sell every where, and hurry to market all the cattle. Of cattle that were worth twenty shillings, or twenty-five shillings a piece, five were known to sell for ten shillings. The next thing that they were forced to part with was the ornaments of their women. The women of India do not decorate themselves according to our mode; their decorations serve as a resource in cases of emergency. These were all forced to be brought to market along with

the cattle; so that gold and silver sold for twenty per cent. under their value. Some will say, Gold and silver sold under its value! Certainly, my lords, where there is an overloaded market and wicked purchasers.

Permit me now, my lords, to set before you the state of the people that remain victims of this oppression. It is notorious that poverty generally prevails among the poor ryots, or husbandmen; that the poor are seldom possessed of any substance, except at the time they reap their harvest; and this is the reason that such numbers of them were swept away by famine. Their effects are only a little earthenware, and their houses a handful of straw, the sale of which was not worth a few rupees; but it is still incredible that there should not be a want of purchasers. My lords, I produce this strange testimony from the person himself who was concerned in racking these people, and I produce it to shew what a country it is. The people, while they were harassed in this manner, sought that dreadful resource which misery is apt to fly to; they fell into the hands of usurers. Usurers, my lords, are a bad resource at any time; and at that time those usurers, to the accustomed hardness of that description of people, added another that makes such men ten times worse, that is, their own necessities. Such was the determination of the infernal fiend, Debi Sing, to have those bonds discharged, that the wretched husbandmen were obliged to borrow money, not at 20, or 30, or 40, or 50, but at *six hundred* per cent. in order to satisfy him!

My lords, I am here obliged to offer some apology for the horrid scenes I am about to open. Permit me to make the same apology to your lordships, that was made by Mr. Patterson — a man with whose name I wish mine to be handed down to posterity. His apology is this — and it is mine — that the punishments inflicted upon the ryots of Rumpore and of Dinagepore, were, in many instances, of such a nature, that I would rather wish to draw a veil over them, than shock your feelings by a detail. But it is necessary for the substantial ends of justice and

humanity, and for the honour of government, that they should be exposed, that they should be recorded, and handed down to after ages: let this be my apology. My lords, when the people had been stript of every thing, it was, in some cases, suspected, and justly, that they had hid some share of the grain. Their bodies were then applied to the fiercest mode of torture, which was this: they began with winding cords about their fingers, till the flesh on each hand clung and was actually incorporated. Then they hammered wedges of wood and iron between those fingers, until they crushed and maimed those poor, honest, and laborious hands, which were never lifted up to their mouths but with a scanty supply of provision. My lords, these acts of unparalleled cruelty, began with the poor ryots; but if they began there, there they did not stop. The heads of the villages, the leading yeomen of the country, respectable for their virtues, respectable for their age, were tied together, two and two, the unoffending and helpless, thrown across a bar, upon which they were hung with their feet uppermost, and there beat with bamboo canes on the soles of those feet, until the nails started from their toes, and then with the cudgels of their blind fury these poor wretches were afterwards beat about the head, until the blood gushed out at their mouth, nose, and ears. My lords, they did not stop here. Bamboos, wangees, rattans, canes, common whips, and scourges were not sufficient. They found a tree in the country which bears strong and sharp thorns—not satisfied with those other cruelties, they scourged them with these. Not satisfied with this, but searching every thing through the deepest parts of nature, where she seems to have forgot her usual benevolence, they found a poisonous plant, a deadly caustic, that inflames the part that is bruised, and often occasions death. This they applied to those wounds. My lords, we know that there are men (for so we are made) whom bodily pains cannot subdue. The mind of some men strengthens in proportion as the body suffers. But people who can bear up against their own tortures, cannot bear

up against those of their children and their friends. To add, therefore, to their sufferings, the innocent children were brought forth, and cruelly scourged before the faces of their parents. They frequently bound the father and the son, face to face, arm to arm, body to body, and then flogged till the skin was torn from the flesh: and thus they had the devilish satisfaction of knowing, that every blow must wound the body or the mind; for if one escaped the son, his sensibility was wounded by the knowledge he had that the blow had fallen upon his father; the same torture was felt by the father, when he knew that every blow that missed him had fallen upon his unfortunate son.

My lords, this was not, this was not all! The treatment of the females cannot be described. Virgins that were kept from the sight of the sun, were dragged into the public court — that court which was intended to be a refuge against all oppression — and there, in the presence of day, their delicacies were offended, and their persons cruelly violated, by the basest of mankind. It did not end there: the wives of the men of the country only suffered less by this: they lost their honour in the bottom of the most cruel dungeons, in which they were confined. They were then dragged out naked, and in that situation exposed to public view, and scourged before all the people. My lords, here is my authority.— for otherwise you will not believe it possible. My lords, what will you feel when I tell you, that they put the nipples of the women into the cleft notches of sharp bamboos, and tore them from their bodies. What modesty in all nations most carefully conceals, these monsters revealed to view, and consumed by burning tortures, and cruel slow fires! My lords, I am ashamed to open it — horrid to tell! these infernal fiends, these monstrous tools of this monster Debi Sing, in defiance of every thing divine or human, planted death in the source of life!

[Here Mr. Burke dropt his head upon his hands, unable to proceed, so greatly was he oppressed by the horror which he felt at this relation. The effect of it was visible

through the whole auditory. Mr. Burke having recovered himself, continued:]

My lords, such are the cruelties that arose from the giving power to Debi Sing, and to infernal villains of his stamp. My lords, the people of India are patience itself: their patience is proverbial. But gentle and inoffensive as they are by nature, the wretched natives were at length roused to resistance; for patience, like all other virtues, has its boundaries, beyond which it cannot possibly be stretched. Their common sufferings made large bodies of them combine, to revenge upon their tyrants the cruelties they had been made to suffer. The first effects of their fury were felt, as is usually the case, by the lowest instruments, and consequently the least criminal, employed in oppressing; they soon sacrificed to their rage some inferior collectors of the revenue: this was instantly pronounced to be a proof of an unprovoked, a wanton, and unnatural rebellion: the army was ordered to march against an unarmed multitude, who had nothing but their despair to oppose to the approach of the troops: they were of course soon broken by a regular army; numbers were relieved by violent deaths from the miseries attendant upon the most absolute poverty, and the memory both of happier days, and of friends and relations, torn from them by the most unheard-of cruelties that oppression could devise. The whole country, after the suppression of this insurrection, wore the most shocking appearance; the face of it was blasted; the villages reduced to ashes, the former inhabitants either destroyed by the sword, or totally dispersed; the fields were over-run with brambles and thistles; and the wild beasts of the forest were left to enjoy the uncontrouled dominion of those plains once so highly cultivated, and thick set with populous villages.

My lords, such a revolution could not but rouse the attention of the council: it was resolved, therefore, that a commissioner should be sent into the country to inquire into the causes of the late rebellion, with instructions to make a report to the board, of the result of his inquiries.

It was thought, that on such an occasion, no man ought to be employed who was not distinguished for an uncommon degree of moderation. Such a man they found in Mr. Patterson. This gentleman was totally unconnected with any party in the government; a lover of peace, and of the most conciliating disposition. It was expected that he would have shared the blame of the rebellion between the oppressors and the oppressed; that he would pronounce both to be in some degree to blame; that he would soften matters: and that his report would recommend that the whole affair should be buried in oblivion. This gentleman had prepared himself for the arduous undertaking of a fair and impartial inquiry into the causes of the disturbances that were to be the subject of it. He knew, that if he should find the natives were innocent of any premeditated design against government, and that they were driven to resistance by provocations too great for human nature to bear, he should draw upon himself the enmity and resentment of a powerful party, if he should make a faithful report of what he should have seen.

On the other hand, he felt that his conscience would be torn, if he should conceal from those who had the power of punishing the guilty, the oppressions which he might discover had driven the wretched natives to madness and despair, and turned their country into a wilderness. He was resolved, however, to do his duty, though at the hazard of his fortune, and of all his future expectations. Before he set out upon his journey, he fortified himself, by reading a letter from his father, which he constantly kept by him, and which he never failed to read whenever he found himself in any situation that might expose him to the temptation of sacrificing his conscience to his interest. In that letter his worthy and venerable father intreated him to make it his constant study to do his duty to God and to the Company, in whatever situation it might be his fortune to be employed. He reminded him, that a quiet conscience, and a spotless name, were more precious than all the wealth of Asia: he warned him, therefore, never to do

any act that could excite remorse, or bring a blemish upon his reputation. He conjured him to look upon his interest as but a secondary consideration; and assured him, that he would have infinitely more comfort in seeing him return to Europe, bankrupt in fortune, but rich in reputation, than if he brought with him the wealth of India, acquired by means that an honest man would blush to acknowledge.

Fortified and confirmed by this letter in his just and honourable resolution, Mr. Patterson set out for the place of his destination, and began his inquiry. The discoveries he made were such, that he said, in his report, he wished, for the credit of human nature, he might have been at liberty to draw a veil over them; but as his duty had made him enter upon the inquiry, so duty, truth, and justice, compelled him fairly to state what he had discovered, though his heart shrunk with horror at the idea of the unparalleled cruelties which he was about to lay open.

My lords, the report fills two large volumes, which are now in the India House. It fully acquits the natives of the guilt of rebellion, and throws all the blame of it upon those, who, by the most unheard-of cruelties, had made the wretched inhabitants desperate. In what condition Mr. Patterson found the country when he arrived there, your lordships may form some idea, from the following extract from one of his letters: — "In my two reports I have set forth generally the manner in which oppression has provoked the husbandmen to part with their stock and goods. I mean not to enumerate them now; every day my inquiries serve to confirm the facts. The wonder would have been if they had not, seeing it was not a collection of the revenue, but a robbery, which, with criminal punishment, and every instrument of disgrace, extended to every individual. There is a period when oppression will rise to resist — conceive the situation of the husbandmen; every thing they had in the world was dragged away, exposed to every exaggerated demand, and sold at so low a price as not to answer that demand. They themselves were subjected to criminal punishment, and the loss of their women

and casts. You will allow the full effect of prejudice on this subject." The consequences of the loss of their cast to these persons, I have already stated to your lordships. The loss of their cast amounts to more than a complete excommunication, a complete outlawry, or attainder would do in this country. The men or women who have lost their cast, are no longer esteemed the children of their parents. This, however, was not all. Debi Sing made use of a species of pillory, which, in India, and particularly by the Brahmins, is considered more dreadful than death. Those who have been disgraced by this pillory, no matter whether with or without just cause, are, as it were, excommunicated; they are disowned by their own tribe, nay, by their nearest relations; and are considered as the outcasts of all society. This pillory, my lords, is a bullock, with a drum-beating on each side. The person who is once seated on it, is ever after disgraced and degraded, he and all his posterity. Debi Sing had this terrible bullock walking through the villages: at his approach the inhabitants all fled; and so general was the desertion of their habitations, that an Englishman who had travelled up the country, declared that he passed twelve miles without seeing a light, and without finding the means of making a fire to dress his necessary food.

My lords, all these direful calamities were the consequence of the government of Debi Sing. One would imagine that they would have drawn down upon him the severity of the governor-general; that if ever Mr. Hastings had a right to exercise arbitrary power, he would have exercised it on this occasion. My lords, we must not be too hasty. This report disappointed the council: a very different one had been expected from Mr. Patterson. The members of the council were greatly embarrassed; — the report ought naturally to have led to the punishment of the authors of the rebellion, and the cruelties that had occasioned it. But they stood not in fear of punishment; they were beyond the reach of it; they were protected by those whose duty it was to bring them to justice; and who, by

neglecting that duty, had abetted the barbarities that disgraced the British government. No attempt, indeed, was made to justify acts which in their nature were so brutal and savage; but the effects of the report were evaded, and exceptions the most captious were taken to it. Instead of proceeding to act upon the report, by calling the delinquent to an account, Mr. Patterson was converted into a voluntary accuser of Debi Sing, and directed to make good the charges. They take an objection, that the depositions are not all upon oath, although it was never ordered that they should be upon oath. They thus throw a doubt, a shadow, upon them all — [Mr. Burke was here taken ill; but he soon recovered, and proceeded thus:]

My lords, I am sorry to break your attention. It is a subject that pains me very much; it is long, difficult, arduous; but, with the blessing of God, if I can, I will go through it this day. The next step they took was this — to put Debi Sing into the shape of an accuser ——

Mr. Burke was here seized with a cramp in his stomach, which obliged him to sit down: he was soon relieved from his pain, but was too much exhausted to be able to proceed. His Royal Highness the Prince of Wales finding Mr. Burke so unwell, immediately moved to adjourn; which was agreed to. Mr. Burke had been speaking above three hours and a quarter.

SIXTH DAY.

Tuesday, February 19.

Mr. BURKE being sufficiently recovered from his indisposition of the preceding day, resumed his speech. He began by recapitulating the objects he had in view in the several matters that he submitted to the court the day before; viz. that Mr. Hastings, by destroying the provincial councils, which formed the whole subordinate administration of the British government in Bengal; by

delegating their powers nominally to a committee of four persons chosen by himself, but in fact to a secret agent of his own, their dewan or secretary; by making this board, which had the whole management of the revenues, independent of, and unaccountable to, the supreme council; and by concurring in the appointment of persons of infamous characters to offices of the highest trust, had made himself responsible for all the mischiefs that flowed from those acts: that the acts themselves had, from the circumstances attending them, the strongest presumptive proofs that they were in the first intention corrupt, and that this presumption was strongly confirmed by the subsequent conduct of Mr. Hastings, particularly in the case of Mr. Patterson, which he proceeded to relate:

The report, with an immense body of evidence, being transmitted to the committee, instead of giving that credit to Mr. Patterson, which persons acting in a public trust, and under the express orders of government, are entitled to, they received it with great coldness and visible disgust; instead of proceeding to act upon the report, by calling the delinquent to an account, Mr. Patterson was converted into a voluntary accuser of Debi Sing, and directed to make good the charges, which he had brought, by evidence upon oath; and finally, he was himself accused by Debi Sing (whose boldness increased with the protection he obtained) of falsehood and forgery, and was put as a criminal upon his defence. Under such circumstances, Mr. Patterson was sent back to that country, in which he had before been received as carrying the whole power of a beneficent government, to see whether, among a ruined, dejected, undone people, he could find constancy enough to stand to their former accusations against the known power of their former oppressor. In the mean time, Debi Sing was sent in custody to Calcutta, not upon the charges contained in the report, but for other offences. Here he remained some time a prisoner at large, and at last, a new commission being appointed to proceed to Rumpore, and inquire into the charges against Mr. Patterson, he was sent

for by the commissioners, and actually sat with them, whilst Mr. Patterson was excluded from all their deliberations. Four years had thus passed, during which Mr. Patterson remained in a state of affliction and continual conflict. Debi Sing remained a prisoner at large, with every mark of protection and authority, and the people of Rumpore, which, said Mr. Burke, is a consideration of much greater importance than Debi Sing, or even than Mr. Patterson himself, remained totally unredressed, remain so to this day, and will remain so for ever, if your lordships do not redress them.

After some farther observations upon the responsibility of Mr. Hastings, as arising from the abolition of the provincial councils, and the constitution of the new committee of revenue, by which he destroyed every check and controul, and delivered the whole into the hands of his bribe agent, Gunga Govind Sing, he adverted to the defence set up by Mr. Hastings, that these presents were never received for his private emolument, but for the use of the Company, and that it was the best method of supplying the necessities of the Company in the pressing exigencies of their affairs. With respect to this system of presents, by which bribery was to be made a supplement to exaction, Mr. Burke first observed, that however promising it might appear in theory, it had not answered in practice; and that he should prove, that wherever a bribe had been received, the revenue had always in some proportion, and often in a double proportion, fallen into arrears; and, secondly, he called the attention of the court to all those dreadful consequences which attended this clandestine mode of supplying the Company's necessities, as it was practised by Mr. Hastings.

Mr. Burke concluded this part of his speech with describing the last parting scene between Mr. Hastings and Gunga Govind Sing; a scene in which he appeared as an accomplice in the most cruel, perfidious, and iniquitous transaction, that, he said, was ever held forth to the indignation of mankind. When Mr. Hastings had quitted his office, and

was now embarked upon the Ganges to sail for Europe; he writes a letter to the council, in which he says, "the concern I cannot but feel, in relinquishing the service of my honourable employers, would be much embittered, were it accompanied by the reflection, that I have neglected the merits of a man who deserves no less of them than of myself, Gunga Govind Sing."

Upon this singular recommendation, Mr. Burke first observed, that with respect to the circumstances of the person whose merits Mr. Hastings was so fearful of leaving unrewarded, he was notoriously known to have amassed upwards of three millions sterling. With regard to his public services, Mr. Hastings states, that he had served the committee of revenue as dewan from its first institution to that time, with a very short intermission. Of this office, and of his services therein, Mr. Burke said he had already given some account: with respect to the intermission, Mr. Hastings had omitted a material circumstance, namely, that it was occasioned by his having been turned out of his office for a short time, upon proof of peculation and embezzlement of the public money. Other public services Mr. Hastings had not mentioned, and the records of the Company were equally silent. What his secret services were, was a subject which, however it might leave room for conjectures, was involved in the same silence and obscurity.

From services, Mr. Burke proceeded to consider the reward proposed; and this was, that a grant of certain domains, the property of the young rajah of Dinagepore, from which country Mr. Hastings had received the present of 40,000*l.* should be confirmed to the son of Gunga Govind Sing, through whom that present had been conveyed. The circumstances of this case were briefly as follow: The son of Govind Sing had been appointed registrar of the provinces of Dinagepore, &c. by virtue of which office he had the guardianship of all the temporalities of the rajah, and the execution of the laws belonging thereto. In this situation, he had obtained a fraudulent grant of a part of the

rajah's zemindary to an immense amount, contrary to law, which makes the acts of all minors void, the rajah being at at this time but nine years old, and contrary to the custom of the country, by which no zemindar can alienate any part of his territory without the consent of the government under which he holds. To cover this proceeding, the consent of one of the nearest relations of the rajah was procured. Such was the grant which Mr. Hastings, at his parting, recommended to the supreme council for confirmation. He was no sooner gone than the other relations of the rajah took courage, and applied to the council to stop the grant. They proceed to inquire. The person who had consented for the rajah was brought down to Calcutta, and declared, that he had been induced so to do by the threats of Gunga Govind Sing. Being thus pressed, Gunga Govind gave up the points of custom and law, and appealed to the arbitrary authority of the council. In an address presented to them, he states, that their power in all such cases was unlimited; that they might act in it as they pleased; that they had frequently separated zemindaries from their lawful proprietors, and given them to others, without right, title, or purchase; he cites the example of a zemindary given in this way, by Mr. Hastings, to the son of Cantoo Baboo, his banyan, and prays that he may have the same favour shewn to him that had been shew to others.

After some observations upon this address, in which he shewed, by other instances, that this practice had gone to a very great length indeed, Mr. Burke gave a short account of another transaction of Mr. Hastings, exactly similar in its principles, operation, and consequences, to that of Dinagepore — the settlement of the kingdom of Bahar. Here was the same selection of the most notorious wicked men, the same present taken, the like ruin of the country, and defalcation of the revenue. The pretence was also the same, namely, the increase of the public revenue. But I hope and trust (said Mr. Burke) your lordships will consider this idea of a monstrous bribe given by men in desperate situations, to men of desperate fortunes, and of

desperate characters, to be one of the grievances instead of one of the advantages of this system. For where a just, natural, easy system of revenue is quitted in a country; where the limits which nature, justice, and reason prescribe are broken down, there the consequence is, that the revenues are shamefully neglected, and the worst men in the country will be chosen, as Mr. Hastings has actually chosen the worst, to effectuate this work; because it is impossible for any good man, by any honest means, to provide at once for the exigencies of a severe public exaction, and a private rapacious bribe given to the chief magistrate. He must have profit both upon the revenue to be paid, and the bribe to be given. Oppression, cruel exactions, rack and ruin on the tenant, must be the consequences of that system.

My lords, none but wicked, bloody, and rapacious persons can be employed to execute such a task. Therefore, I charge Mr. Hastings — and we shall charge him when we come to bring it more home to him — I charge him with having destroyed the whole system of government, which he had no right to destroy, in the six provincial councils — I charge him with having delegated away that power, which the act of parliament had directed him to preserve unalienably in himself — I charge him with having formed an ostensible committee to be instruments and tools at the enormous expence of 62,000*l.* a-year — I charge him with having appointed a person dewan to whom those tools were to be subservient, a man, whose name, to his own knowledge, by his own general recorded official transactions, by every thing that can make a man known, abhorred, and detested, was stamped with infamy; with giving him this whole power, which he had thus separated from the council-general, and from the provincial councils — I charge him with taking bribes of Gunga Govind Sing — I charge him that he has not done that bribe-duty with fidelity; for there is something like a fidelity in the transactions of the very worst of men — I charge him with having robbed those people of whom he took the bribes — I charge him with having alienated the fortunes of widows — I charge

him with having, without right, title, or purchase, taken away the lands of orphans, and given them to the very person under whose protection those orphans were — I charge him with giving those very zemindaries to the most wicked of persons, knowing his wickedness; with having committed to him that great country, and with having wasted the country, destroyed the landed interest, cruelly harassed the peasants, burnt their houses, and destroyed their crops — I charge him with having tortured and dishonoured their persons, and destroyed the honour of the whole female race of that country. This I charge upon him in the name of the Commons of England.

Now, my lords, what is it in this last moment that we want besides the cause of justice — the cause of oppressed princes, of undone women of the first rank, of desolated provinces, and of wasted kingdoms? Do you want a criminal, my lords? When was there so much iniquity applied to any one? No, my lords, with respect to India, you must not look to punish in India more; for Mr. Hastings has not left substance enough in Asia to punish such another delinquent. My lords, if a prosecutor you want, the Commons of Great Britain appear to prosecute. You have before you the Commons of Great Britain as prosecutors; and I believe, my lords, I may venture to say, that the sun in his beneficent progress does not behold a more glorious sight, than to see those that are separated by the material bounds and barriers of nature, united by the bond of social and natural humanity; and all the Commons of England resenting as their own, the indignities and cruelties that have been offered to the people of India. My lords, permit me to add, neither do we want a tribunal; for a greater tribunal than the present, no example of antiquity, nor any thing in the world, can supply. My lords, here we see, virtually in the mind's eye, the sacred minister of the crown, under whose authority you sit, and whose power you exercise. In that invisible authority, which we all feel the energy and life of, we see the protecting power of his majesty. We

have also, my lords, sitting in judgment, in this great and august assembly, the Heir Apparent to the crown, such as the fond wishes of the people of England desire an heir apparent to be. We have here all the nobles of England, offering themselves as a pledge for the support of the rights of the crown, and the liberties of the people. We have here, my lords, a great hereditary peerage; we have those who have their own honour, the honour of their ancestors, and the honour of their posterity to guard; and who, while they inherit the virtues of those ancestors, will be anxious to transmit them to that posterity. My lords, we have also here a new nobility, who have raised themselves by their integrity, their virtue, and their magnanimity, and those who, by their various talents and abilities, have been exalted to a situation, by the wisdom and bounty of their sovereign, which they well deserve, and which may justify that favour, and secure to them the good opinion of their fellow subjects. These will be equally careful not to sully those honours. My lords, we have here persons highly exalted in the practice of the law, who come to sit in this tribunal, to enlighten it, and to strengthen and promote those principles which they have maintained in their respective courts below. These being ennobled for their superior knowledge, will, no doubt, see that the law is justly and impartially administered. My lords, you have here also the lights of our holy religion, the bishops of our church. Here we behold the true image of the most incorrupted religion, in its primitive and antient forms; here you behold it in its primitive ordinances, purified from the superstitions that are but too apt to disgrace the best institutions in the world. You have here the representatives of that religion, which says, that God is a God of love, that of their institutions the very vital spirit is charity, and that it so much hates oppression, that when the God whom we adore appeared in human form, he did not appear in greatness of majesty, but in sympathy to the lower people, and made it a firm principle, that in that

government which he who is Master of nature and who appeared in our humble form has established, of the flock that feed and those that feed them, he who is called first among them, is and ought to be the servant of the rest.

My lords, these are our securities; we rest upon them; we reckon upon them; and we commit, with confidence, the interests of India and of humanity to your hands. Therefore it is, that, ordered by the House of Commons of Great Britain, I impeach Warren Hastings of high crimes and misdemeanors.

I impeach him in the name of the Commons of Great Britain in parliament assembled, whose parliamentary trust he has abused.

I impeach him in the name of the Commons of Great Britain, whose national character he has dishonoured.

I impeach him in the name of the people of India, whose laws, rights, and liberties, he has subverted.

I impeach him in the name of the people of India, whose properties he has destroyed, whose country he has laid waste and desolate.

I impeach him the name of human nature itself, which he has cruelly outraged, injured, and oppressed, in both sexes. And I impeach him in the name and by the virtue of those eternal laws of justice, which ought equally to pervade every age, condition, rank, and situation in the world.

Speech on Opening the Presents Charge.

THIRTY-SIXTH DAY.

Tuesday, April 21. 1789.

ON the 20th of November 1788, the two Houses of parliament met, in consequence of the last commission for their prorogation having expired; but were under the necessity of

postponing the business of Mr. Hastings's trial, from a severe indisposition with which his majesty was then afflicted, and which prevented the opening of the session in the usual regular manner till the 10th of March 1789, when a commission having issued under the great seal, appointing certain commissioners to hold the parliament, the lord chancellor opened the business of the same with a message from his majesty. On the 14th of February, an order had been previously made by the House of Lords for resuming the trial on the 6th of April; this, however, was afterwards discharged; and on the 30th of March, another message was sent to the Commons, intimating that they would proceed on the trial of Warren Hastings, Esq. on Tuesday the 21st of April. Accordingly, this day the proceedings in this Trial were resumed. At twelve o'clock the peers in their robes took their seats in the court in Westminster-hall, and ordered the serjeant at arms to summon Mr. Hastings to appear. That gentleman was soon brought to the bar by the usher of the black rod; and the serjeant at arms having, by order of their lordships, called upon the Commons to proceed in support of the Charges brought by them against the prisoner,

Mr. BURKE rose, and addressed the court:

The melancholy event, he said, of his majesty's illness, which had so deeply afflicted the nation, and suspended the functions of government, had occasioned a delay in the prosecution of the impeachment, which was to be regretted, not only on account of the melancholy cause that had produced it, but also of public justice; the course of which, at least in the present case, had been unavoidably checked for a considerable time. The cause of the delay was now happily removed, and their lordships were again enabled to proceed in the important trial which had already taken up much of their attention.

He trusted, that in the tumult of joy occasioned by his majesty's recovery, which now filled the breasts of all his subjects with exultation equal to the depression which they felt whilst his majesty was afflicted with sickness—he trusted, he said, that in this tumult of joy, their lordships would not forget, that justice was due of right to the injured, and that

they could not voluntarily suspend it without a breach of their public duty.

He said, he was just come from a place (the House of Commons) where regulations had been made for seconding his majesty's wishes, in giving solemnity to the public thanksgiving that was to take place on Thursday, and paying due homage to the Almighty for his happy recovery. But it was not by prayer alone that becoming homage was to be paid to Heaven. Courts of justice were links of that great chain, of which the first and great link was Divine Justice. This was an attribute essential to the Deity; and man, by endeavouring to approach as nearly as the nature of man would admit, to a resemblance to his Maker, might be assured that in exercising representative justice, he was performing a service and an homage not less acceptable to Heaven, than the most fervent prayer.

Having premised this, he said, there were some difficulties under which the impeachment had of late begun to labour, which he would endeavour, with their lordships' leave, to remove. Some persons, no doubt less friends to public justice than to Mr. Hastings, had of late begun to ask, when this trial would termniate? To their question, he would give this short answer — "As soon as the ends are attained for which it was instituted."

It would be strange indeed, if, because a prisoner had contrived to render it difficult for his prosecutors to discover all the mazes of his corruption and crimes; if, because he was watchful to seize every opportunity that might occasion delay or trouble, and was ready to improve it, that his prosecutors should abandon the duty they owed to the public and to their conntry, and suffer a criminal to escape punishment, merely because it was likely to be a work of labour and of time to prosecute him to conviction. If a prisoner was watchful, active, laborious, and persevering, it would be shameful for those to whom the care of bringing him to justice was committed, to be wanting in vigilance, activity, labour, and perseverance.

If the length of time that a trial was likely to last, was a reason for putting an end to it, it was equally a reason for not beginning it. But as both houses of parliament had entered upon this trial, which they knew before-hand must, from its nature, run to great length, he made no doubt but they would feel it to be a duty both to the nation and to the prisoner, not to drop it, but to carry it on until it should terminate where alone it ought to end — in the acquittal or condemnation of the party accused.

He was well aware, he said, that their lordships must find it a work of labour and fatigue to sit out so long a trial; but he would say at the same time, that the Commons would not call upon their lordships to undertake any thing, of which they were not ready to set them an example. The committee appointed to decide upon the merits of the petitions complaining of an undue election for Colchester, had been kept sitting, within a day or two, as long as their lordships had hitherto been occupied in this trial; and yet the committee had to inquire into little more than paltry acts of bribery, amounting only to odd pounds, shillings, and pence, and into the conduct of a returning officer, who was no more than a miller. But their lordships had before them a governor-general of Bengal, who was charged with enormous crimes, and with having taken bribes, and plundered the defenceless people of his government of sums amounting to millions!

But the length of the trial was not the only objection that he had heard urged against it; he had been informed that the prisoner had complained to their lordships of the great expence to which it exposed him, and that it threatened him with the total ruin of his fortune, as his defence had, even in this early stage of it, cost him already near 30,000*l*. This was certainly a very large sum; and it was by no means his wish to exhaust any man's fortune merely by his defence. How so great a sum could have been possibly expended by him already, he could not comprehend; but this he would venture to say, that the fortune of Mr. Hastings was not likely to be exhausted by the expence to

which he was subjected by his defence. The immense bribes he had received whilst he was in office, had so swelled his fortune, that he might consider the loss of 30,000*l.* as a trifle. He had received from one single zemindar, at one time, a bribe to that very amount. And therefore, as their lordships would find, that the immense fortune of the prisoner had been acquired by peculation, they would not think it very hard, that wealth so acquired should be diminished; nor would they feel any compassion for the losses of a person, who was obliged to take from the stores which extortion and oppression had enabled him to accumulate.

Having made these preliminary observations, Mr. Burke said, he hoped that notwithstanding all the difficulties which had been thrown in the way of the trial, it was now going to be resumed under auspices as favourable as those under which it had begun.

He then informed their lordships, that the Charge which he was about to open, was the one which related to Presents, or in plain English, Bribes. But before he open the charge, he begged leave to make a few remarks upon something that had happened, since the last time he had had the honour of addressing their lordships. Packets, he understood, had been brought over from India, containing attestations from persons, from whom Mr. Hastings was charged with having taken or extorted money, the purport of which attestations was to exculpate the accused, and to declare that, with respect to them, he had not acted rigorously or unjustly, or despoiled them of any part of their property, but had behaved to them with kindness, moderation, and justice.

At first sight, the Commons, he said, might appear in an aukward light, by being thus disavowed by those very persons, on account of whose sufferings and wrongs occasioned by the prisoner, they had brought him to their lordships' bar to answer for his administration. It was odd that the parties, in whose behalf the prosecution had been commenced, should come forward and declare that they had

received no injuries from Mr. Hastings, that he had done them no wrongs.

But so far were the managers for the Commons from being disconcerted by these attestations, that they would be themselves the first to offer them in evidence. Their lordships would then see what little dependance ought to be placed upon attestations signed by persons, whose fingers were still shooting with the pain occasioned by thumb-screws, and who nevertheless could be prevailed upon to declare under their hands, that the man who had wronged, tortured, plundered them, was their benefactor. These attestations, accompanied by the other evidence which the Commons would produce, would serve to shew the deplorable state to which the wretched natives of India were reduced, who were so much in awe of their rulers, that fearing to complain, they even bestowed praises upon their undoers —

Mouth-honour, breath,
Which the poor heart would fain deny, but dare not.

These attestations would serve at the same time to shew the influence which Mr. Hastings still possessed in India, through the means of his creatures, who fill all the subordinate offices of government in that country. This influence was sufficient to procure signatures to any kind of instruments framed by the friends of Mr. Hastings, in his defence; instruments which, however, unfortunately for the prisoner, would defeat the very purpose for which they were procured; for they actually denied some important points which Mr. Hastings himself admitted; and therefore they might be said to mean this, "If Mr. Hastings accuses himself of having taken any money from us, don't believe him, though he speaks against himself; for he has not plundered us, or behaved otherwise to us than kindly." That this might not be thought a forced construction, Mr. Burke read from one of these attestations a declaration made by a native of great rank in India, from whom Mr. Hastings admitted he had received money, to this

effect — "that the governor-general had never taken any from him."

Mr. Burke remarked humorously upon the style of these attestations, which, he said, all bore evident marks of European birth. It was clear, he said, they had been first written in English, in all the simplicity of a western style; that they were afterwards translated into Persian, and adorned with the lofty metaphors of the East; and then turned once more into English for the benefit of their lordships. The same ideas, the same arrangement, ran through them all: the first that was seen was liked, and being liked was adopted by all; which shewed that they were extremely well calculated to convey the ideas of the prisoner's friends, and were therefore re-echoed from every part of India; and thus was verified what Voltaire had justly said, "Les bons mots sont toujours redits." He remarked, that though attestations to character were admissible evidence in criminal prosecutions, they were a species of evidence which ought to be received with great caution; and their lordships should weigh well from whom, by whom, and under what circumstances they were obtained. Attestations to character in the English courts of law, were like the laudationes of the ancients, with which the advocates of persons under accusation filled their speeches, and on which they relied much for the acquittal of their clients. — But how little, (said Mr. Burke,) ought judges to trust to these laudationes, when there scarcely ever was a criminal yet brought to trial, who had not been able to produce them in his defence. Your lordships know that even Caius Verres plumed himself upon the laudationes, by means of which he hoped not only to escape punishment, but to overturn the accusation, and cover his accusers with confusion, by shewing that there was not even a shadow of ground for the charges they had brought against him. Your lordships know that even Caius Verres, whose name for rapacity, peculation, and oppression, had passed into a proverb, and who had nearly destroyed Sicily, was able to procure attestations from that island, that he had made

moderation, equity, and justice, the rules of his conduct, whilst he was governor of that country. Is it, then, matter of surprise that Mr. Hastings should procure attestations to his character, from a country, where his influence is kept up by means of his numerous dependants, who fill all the subordinate departments of government, and where consequently the wretched natives dare not refuse any thing which the partizans of Mr. Hastings may think proper to ask?

Mr. Hastings, in his defence, has thrown light upon this subject, and proved that no one ought to rely on those attestations. When ordered by the court of directors to arrest Mahomed Reza Khan, Mr. Hastings dismissed from their employments every native in Bengal who owed his appointment to that person; and then assigned this reason for his conduct — that if these people had been suffered to remain in power, it would have been impossible to bring their principal to justice. If this was a good reason, it would destroy the whole force of the attestations in favour of Mr. Hastings; for to adopt his own words, it might be said that he could not be brought to justice while his dependants remained in power in India; and if the example of Mr. Hastings was such as might be followed in any instance, the Commons might, as a preliminary to trial, desire that all the dependants of the prisoner, holding offices in India, should be removed from their situations, for otherwise it would be impossible to bring him to justice.

But the Commons could not think of imitating the arbitrary disposition of a man, who waged war against even the friends or dependants of the person whom he wanted to punish. So far, therefore, were the Commons from wishing that these people should be dismissed, that they would themselves produce in evidence against the prisoner those very attestations procured by his friends, and on which he seemed to rely so much for his defence; and from them they would corroborate the charges which the prisoner hoped by means of them to overturn.

The production of these laudationes appears to me,

(said Mr. Burke,) to indicate that the prisoner has no great dependance upon the merits of his cause; and I augur but badly of his defence, when I see him resort to those means, to which persons standing at the bar of the inferior courts of criminal law in this country, never fail to have recourse, when they are not able to defend themselves by evidence relating to the facts with which they are charged. At the Old Bailey, persons who are indicted for murder, burglary, robbery, &c. always call evidence to character, when they have no defence with respect to fact. Witnesses are then produced, who declare that they have known the prisoner from a boy; that he always bore a good and honest character; and that they would trust him with untold gold. But, my lords, mark the consequence. This admirable character is generally followed by the verdict — Guilty — Death. And this must always be the case, when a man has nothing but character to oppose to irrefragable proofs; and when character is a commodity so easily to be manufactured or procured.

Having thus far cleared his way, Mr. Burke went into the consideration of the Charge.

To shew that the government of India was in a peculiar manner exposed to temptation and corruption, he caused to be read by Mr. Grey, one of the managers, a minute entered in the council book of Calcutta, by the late Lord Clive, which pointed out the existence of this evil, and the necessity of opposing a barrier against it. His lordship recommended it in strong terms to the court of directors, to settle upon the governor-general and upon the council, such salaries as might place them beyond the reach of temptation; and strictly to forbid them to receive any presents from the natives.

The court of directors felt the propriety of what was thus recommended; they saw the extent to which corruption had prevailed among their servants, who to their own private emolument had sacrificed the interests of the Company and the character of their country. They therefore resolved to form a new government, upon the plan recom-

mended to them; and reposing in Mr. Hastings the highest trust that had ever been placed by them before in any of their servants, sent him to Calcutta, and granted him a splendid support for his new dignity.

By the covenants into which he entered with the Company, Mr. Hastings had bound himself never to receive any present from the natives, above the value of 400l. In proportion as the trust thus reposed in Mr. Hastings, and the confidence placed in him were great, so in proportion was his guilt in violating them. He maintained the system of corruption, which he was sent to destroy, and he took bribes, though he was bound not to receive so much as presents.

With respect to his receiving money, he had admitted, in his defence, that the fact had often happened; but then he justified his conduct in those cases, by saying, that money in India is often given as a tribute, &c. and that in that light, and that only he had received it. But this defence could not bear him out.

There were in India, Mr. Burke said, but two species of payments, except for goods bought and sold, that could be called legal. One was called a peshcush, and was the consideration which was given for a grant of zemindaries, lands, &c. The amount of this peshcush was always specified in the grant, and was always paid into the exchequer. The second species was called a nazir or nazirannah, and was given as a token or acknowledgment of dependance, from an inferior to his superior. The nazir was always trifling; the highest he had ever heard of in India, as given to a native, consisted of one hundred pieces of a gold coin, worth about thirty-six shillings each, and this nazir was to no less a man than the sovereign of Indostan, the Great Mogul himself. But what might be a proper present to the King of Delhi, would be too trifling for Mr. Hastings, who took whole lacks of rupees at a time.

Of the first of these two species of payment, Mr. Hastings could not pretend to avail himself in his defence, because the peshcush formed a part of the public revenue:

and the second could be no gratification to him, because the money that could be fairly taken under the denomination of a nazir must necessarily be only to a small amount; and therefore when he took large sums from the natives, for his own private use, they could be considered, let them be coloured by what name they might, only in the light of bribes.

As to the proofs which he intended to produce of the receipt of bribes, Mr. Burke said they were of two kinds — one presumptive, the other positive; and both, he hoped, would be found fully sufficient by their lordships. He begged leave here to discriminate the parts of the charge to which he intended to apply the presumptive evidence. Mr. Hastings was directed by his superiors in Leadenhall-street, to remove Mahomed Reza Khan from the offices which he held under the nabob of Bengal, and to inquire into his conduct during his administration, which was suspected to be corrupt.

Mr. Hastings executed the order, but with a degree of rigour not enjoined, and not warranted by his instructions. He caused Mahomed Reza Khan to be arrested, and carried under a military guard to Calcutta, where he was kept a prisoner for near two years, under a severe restraint; for he was not only not suffered to pay a visit, but was not permitted even to receive one. This treatment of a person of illustrious rank disgusted the natives, who beheld with indignation a man confined under a military guard, who had filled the highest offices in the state; who had been a kind of viceroy of a great kingdom, under the nabob of Bengal; and who, Mr. Burke said, if he could compare situations in India with those which were in some degree similar in England, united in his own person the several high offices of first lord of the treasury, lord high chancellor, lord chief justice, and lord archbishop of Canterbury; and who, for the support of his great dignity, had a salary or income of 100,000*l.* a year.

Though it might have been proper to inquire into the conduct of a man suspected of mal-administration, yet

Mahomed Reza Khan was not a person to be treated with indginity; all that could be necessary on the occasion was, so to secure his person, that he might be forthcoming when his judges were ready to try him. The rigour used by Mr. Hastings was employed for corrupt purposes, namely, to compel that minister to purchase the indulgence of the governor-general.

Mr. Hastings practised upon his fears in more ways than one. He acted as if he was going to proceed against his prisoner with unrelenting rigour; and with this view he did a most cruel thing, for, as had been already observed, he turned out of office every native in the whole kingdom of Bengal, who was indebted for his appointment to Mahomed Reza Khan, and filled up all the vacancies with persons known to be enemies to that unfortunate minister. In consequence of this measure, great numbers of poor people were reduced to poverty by the loss of places which they had long held, and which were their only support.

Mr. Hastings had justified this measure to the court of directors, by saying, that if it had not taken place, the influence of Mahomed Reza Khan would have stifled all evidence of his guilt, through the means of his creatures in office. Who would not think, said Mr. Burke, after such steps as these, that Mahomed Reza Khan was going to be put to a severe trial? Who would not think that he was to expect nothing but inexorable justice? But those who might think so, knew little of Mr. Hastings. For in fact, Mahomed was dismissed not only without punishment, but without trial. So that it might fairly be presumed, all things considered, that as it was not the guilt of this man which had caused him to be treated with so much unjustifiable rigour at first, so it was not to his innocence that he was indebted for the restoration of his liberty, and the end that was put to all proceedings against him. It might be fairly inferred he had made his peace with Mr. Hastings, and given proofs of his innocence, with which a court of justice would not have been satisfied.

He trusted their lordships would agree with him, that in

this whole proceeding there were strong presumptive proofs that Mr. Hastings sold this mussulman his liberty, and that the latter actually paid the price for it.

There was something in circumstances, which he considered in evidence as infinitely stronger than the most positive oath. And as accusations might fairly be repelled in some situations by the characters of the parties accused; so they might be supported by them and by circumstances. For instance, said Mr. Burke, if a man was to swear to me that he had seen the lord chancellor, the lord chief justice, and the archbishop of Canterbury, in their robes, robbing on the highway in open day, I would not believe such an assertion, though upon oath, because the act so sworn to would be contrary to all rules of probability, and to the characters of the personages so accused, and consequently incredible: but were I to see a man, whose character for corruption was generally known, take a rich person into custody, threaten him with the vengeance of the law, and the power of his enemies; and afterwards not only not punish that person, but enlarge him without having so much as tried him, I would instantly say to myself, the rich man has bribed his prosecutor, and purchased impunity with the sacrifice of a part of his wealth. And in saying this, I should not fear that I was passing a rash judgment, though I had no positive proof that the bribe was actually given.

The next point to which Mr. Burke said he intended to apply presumptive evidence, related to Munny Begum. But he apprised their lordships that he did not mean to confine himself entirely to presumptive proofs on this head. When Mahomed Reza Khan was removed from his offices, one of which was that of guardian and chief minister to the then nabob of Bengal, who was at that time a minor, Mr. Hastings was ordered by the court of directors to supply his place with some man of known integrity and ability. Did Mr. Hastings pay ready obedience to this order? No. On the contrary, he completely disregarded it; and instead of a man, named a woman to fill the im-

portant office of guardian and minister to the young prince.

The circumstances attending this appointment, were of a nature that strongly indicated corruption in the governor-general. To make this appear clearly, Mr. Burke gave a short history of Munny Begum. This woman, he said, was born a slave, had been a dancing girl by trade, and a prostitute by profession. Those who knew any thing of India, knew that the dancing girls were the very outcasts of society. Dancing in India was not considered as in Europe; it was not that majestic and graceful movement which gives ease and dignity to the carriage, which polishes the manners without corrupting the morals, and which the most innocent and virtuous of the fair sex very properly study to acquire and improve. Dancing in India consisted in immodest and lascivious gestures, and in actions which could not be named in an assembly such as he had the honour to address. This dancing girl, this Munny Begum was employed, among others, to dance before the present nabob's father, who taking a liking to her, for some time carried on a commerce with her: she told him at last she was pregnant, and made him believe she was so, by him. Upon this he took her into the seraglio, where she was delivered of a son, and where she was treated with the same respect as the rest of the ladies of that place. Her influence was so great, that she procured her bastard son to succeed the nabob, to the prejudice of his legitimate children; and accordingly he ascended the throne after the death of his supposed father. His mother had all the authority under him: but his reign was of short duration, for he died a minor. The eldest legitimate son of the old nabob was then raised to the throne, and his mother, a princess of illustrious birth, was invested with the dominion of the seraglio, from which Munny Begum had been removed at the death of her son. Under this young nabob, Mahomed Reza Khan governed the country. When Mr. Hastings removed this minister, the uncle of the nabob requested the governor-general would appoint him to fill the vacancy oc-

casioned by this removal: the uncle was a prince whom Mr. Hastings himself had described as a man without ambition, and by no means dangerous; and therefore he might have been appointed without danger to the Company's interest. But this prince was poor; he had nothing to support himself and family but a pension from the Company; a person so situated had little chance of succeeding with a man of the character of Mr. Hastings.

The person most fit for the government of the seraglio was the respectable mother of the nabob; but Munny Begum, the dancing girl, who knew the world, gained the favour of Mr. Hastings by means of irresistible arguments; and by him she was appointed ruler of the kingdom in the name of her step-son, whose own mother was removed. Instead of appointing a man to succeed Mahomed Reza Khan, according to the Company's orders, Mr. Hastings appointed a woman, who, according to the manners of Asia, could not be seen, and to whom no one could speak but on a different side of a curtain from her; and a woman so situated was to preside over the administration of all affairs, civil, judicial, religious, and military! By order of the Company, Mr. Hastings was to appoint to this situation a person of integrity: the way in which he obeyed his superiors was by trusting the government of the country, and the education of the young prince, to a person who, having been a dancing girl, had been, of course, a prostitute by profession.

To account for this strange conduct in the governor-general, Mr. Burke said, Munny Begum offered two lacks of rupees, or about 22,000*l.* sterling for the situation. Mr. Hastings accepted the offer, touched the money; and she, to the disgrace of the British government, was placed at the head of affairs.

But the disobedience of orders did not stop here. The court of directors ordered Mr. Hastings to make reductions in the nabob's establishments, and cause the savings to be paid into the Company's treasury. They ordered him, at the same time, to cause regular accounts of those

savings to be kept, and transmitted, from time to time, to England. But though the reductions were made, no accounts of the savings were kept, at least none were ever transmitted to England. The savings, however, were known to amount to about 90,000*l.* a year, the whole of which, it was extremely probable, Mr. Hastings had converted to his own private use; for, what was remarkably suspicious in all these transactions relative to Mahomed Reza Khan and Munny Begum, the governor-general acted without the concurrence, or so much as the knowledge of his colleagues in the council.

Thus, all the pains which the Company had taken to place their servants beyond the reach of temptation, or at least of corruption, were entirely lost—in vain had they settled upon the governor-general an income of near 30,000*l.* sterling a-year, which had been thought sufficient for that purpose, not merely by the court of directors, but by the council of Bengal itself. If Mr. Hastings himself was to be believed, it was sufficient, not only to support in splendour the office of governor-general, but to enable him, "in a few years," (the prisoner's own words,) "to lay by "enough to make him comfortable and independent all "the rest of his life." The prisoner had enjoyed that situation near fourteen years, and yet it had been trumpeted abroad by his friends, that he was comparatively poor. In his minutes in council, he boasted that fame, and the good opinion of his country, were his great objects, before which all consideration of fortune or wealth died away.

The desire of fame for services done to one's country, though not virtue, was certainly the best counterfeit of it, the best substitute for it, and was truly laudable. The man who felt an ardent passion for honest fame, would be found superior to every groveling passion; all his actions would partake of the ruling passion, and bear the impression of nobleness. But nothing of this was to be found in Mr. Hastings: he affected to disregard a brilliant fortune, merely to look for a competent one, and to court only the good opinion of his country. What was now his situation?

He had failed in every thing. By his own declaration, he who wanted a competency only, was a bankrupt in fortune, and he who had constantly in view the good opinion of his country, which he considered as the great reward of all his labours and services, was now a prisoner at their lordships' bar, and his country was his accuser!

The accusations which stood against him were not for acts of direful desolation and slaughter. Such acts in general were privileged crimes, the effects of superior wickedness, and consequently were not likely to be often repeated. But the crimes which were laid to the charge of Mr. Hastings, were of the groveling kind, which did not usually grow upon a throne, but were hatched in dunghills. However, when they were carried to the throne, and sanctioned by the highest authority, then they became not the effects of a momentary passion, but the consequences of a systematic plan, which originating in a sordid soul, could never give way to a noble and generous impulse. The fountain-head being corrupt and impure, the whole stream must partake of the corruption; the chief ruler himself being the example of corruption, must necessarily encourage, instead of repressing and destroying it; and thus a general system of bribery and peculation must take place through the whole government. This, Mr. Burke said, was a true picture of the public service in Bengal, from one end of it to the other.

Having dwelt long upon this point, Mr. Burke next adverted to those acts of corruption, of which Nundcomar had given information to the council.

The charges brought by Nundcomar against the governor-general depended upon many circumstances, and he had named so many witnesses who were to support them, that if they were false, he afforded the very best means that Mr. Hastings could wish to refute them. But without ever declaring that they were false, he refused to meet them; he vilified the accuser, and repeatedly dissolved the council, that his colleagues might not be able to proceed in their inquiries into these charges. They made

some progress, however, and Nundcomar's evidence, together with that of his son Rajah Gourdass, was taken; in which they mentioned the sums which they themselves had paid Mr Hastings in the name of Munny Begum; the very species of coin in which they were paid; the bags in which the money was tied up; and the exchange that was paid and to whom, for giving the current coin of Calcutta in its stead. This was corroborated by a letter from Munny Begum herself: and to crown all, Nundcomar desired that Cantoo Baboo, Mr. Hastings's own banyan, might be examined to all these points. The governor-general, however, who was bound by a regard for his own honour, who was bound by the orders of the Company to inquire into acts of peculation and corruption, and by an act of parliament, under the authority of which commissioners had been sent to India for that purpose, not only disobeyed the company and the legislature, but would not suffer his own servant to obey either. He did not so much as attempt to deny the charges; certainly he never undertook to disprove them. He contented himself with vilifying his accuser, and saying, that a man, at the head of a great government as he was, was not bound to answer accusations brought by, what he was pleased to call, so vile a person as Nundcomar.

It might, perhaps, be proper, Mr. Burke said, for a man bold in conscious rectitude to oppose his general character to general accusation; but it was a mark of weakness, not to say of guilt, to oppose general character to specific accusations, such as were the charges brought against him by Nundcomar. He had, indeed, reviled that rajah, called him wretch, and described him as the most contemptible of his country. But Nundcomar was in his own country, by his birth equal in dignity to any peer among their lordships; in sacredness of character, to any bishop; in gravity of deportment, to any judge; and in fortune, to most princes.

Here Mr. Burke said, that if the counsel should hereafter be so injudicious as to attempt to bring forward the

conviction of Nundcomar, for the purpose of destroying the effect of these charges, he would open that scene of blood to their lordships' view, and shew them, that Mr. Hastings had murdered that man by the hands of Sir Elijah Impey.

The last point on which Mr. Burke touched, was the lack and a half of rupees given to Mr. Hastings, as a bribe, when he went to Moorshedabad, the residence of the nabob of Bengal. It appeared, that the treasurer of that prince, not knowing under what head of accounts to place the expenditure of that sum, consulted the prince, who desired him to put it under the head of expences for entertaining Mr. Hastings!

Now, such expences could not have been incurred on this head; for the entertainment must have been not only extravagant, but absolutely beyond the means of the nabob, as their lordships should see, unless he was suffered to reimburse himself by a fraud upon the East-India Company. By order of the Company, the nabob's allowance for all his expences had been reduced from 250,000*l.* a-year, to 160,000*l.* Now the entertainment of Mr. Hastings, at the rate of a lack and a half of rupees, for less than three months that he staid with the nabob, must cost 200*l.* per day, and near 70,000*l.* a-year; and as Mr. Middleton had also a similar allowance for entertainment, almost the whole of the nabob's income must have been spent upon these two persons; a degree of hospitality this would be, which no prince in Asia, or Europe, could afford to exercise.

But what rendered it extremely shameful in the governor-general, who admitted that he cost the nabob the lack and half of rupees, though he would not allow that he had pocketed the money, to suffer such an article as this to appear under the head of entertainment, was, that by the reduction of the nabob's income, he had reduced to absolute beggary about fourteen hundred of the decayed nobility and gentry of Bengal, who by the introduction of the English into their country, were driven from all places, both civil and military, which were engrossed by these foreigners; and had nothing in the world to subsist

upon, but small pensions, from the nabob, which were taken from them when that prince's allowance was reduced. Had the expence to which Mr. Hastings put the nabob been allowed for the use of this body of gentry, it would have fed them all, numerous as they were.

Thus it was that Mr. Hastings gorged his ravenous maw with an allowance of two hundred pounds a day. He is not satisfied without sucking the blood of fourteen hundred nobles. He is never corrupt without being cruel. He never dines without creating a famine. He feeds on the indigent, the decayed, and the ruined; and them he depresses together; not like the generous eagle, who preys on a living, reluctant, equal prey: no, he is like the ravenous vulture, who feeds on the dead and the enfeebled; who destroys and incapacitates nature in the destruction of its objects, while devouring the carcases of the dead, and then prides himself in his ignominious security; and his cruelty is beyond his corruption. There is a mockery of feeling in the account given by Mr. Hastings of the situation of these decayed gentlemen. He said, that he reduced, without reluctance, the nabob's elephants, menageries, and stables; but when he was obliged to cut off the pensions, which he knew to be the only support of these unfortunate families, he said "his heart was bleeding whilst he was doing it." Execrable hypocrisy! cried Mr. Burke; insulting pity! I know not in which this man was most cruel — in stripping these people of their only support, or in pretending to feel for their distresses, when the daily expence to which his table put the nabob, would have removed them all!

It being now four o'clock their lordships adjourned.

THIRTY-EIGHTH DAY.

Saturday, April 25.

The Court being assembled,

Mr. BURKE proceeded:

He reminded their lordships, that when he had last the honour of addressing them, he shewed that from various circumstances attending many acts of the prisoner's administration, there was strong ground for presuming him to be guilty of corruption, and that this presumption of guilt was turned into certainty, by positive proofs; so that their lordships would have, in this case, the most satisfactory evidence — presumptive evidence, arising from the nature and circumstances of the measures on which the charge then under consideration was founded — and positive evidence, consisting either of written documents, or the oral testimony of witnesses.

The presumption of guilt, arising out of circumstances which attended the measures of the prisoner's government, was confirmed also by a variety of circumstances that followed those measures. On this ground he begged leave to go a little at large into the conduct of the prisoner, which, he contended, was of itself, and even without any other proof, sufficient to fix upon him the guilt of peculation and corruption.

When the council of Bengal was new-modelled, and Sir John Clavering, Colonel Monson, and Mr. Francis, were appointed members of it, orders were sent out by the court of directors to that council, to inquire into the acts of peculation and oppression that might have been committed upon the natives by any of the company's servants in India. These three gentlemen, in obedience to the Company's orders, proposed, and being a majority of the council, carried their proposition, that such an inquiry as was prescribed by their superiors, should be instituted. In the course of it, charges of bribery and corruption were exhibited to the council against the governor-general

himself. But that gentleman, instead of meeting the charges with that confidence which became a man bold in conscious innocence, refused to make any defence; nay, he refused to meet the accusers, and resisted all inquiry to the utmost of his power. With this view he dissolved the meeting of the council; which measure, he hoped, would prevent his colleagues from proceeding in the charges brought against him; or would involve in irregularity the examination of witnesses upon those charges, taken after a dissolution of the meeting, should his colleagues resolve to sit and hear evidence, notwithstanding such dissolution. In adopting such a line of conduct, Mr. Hastings endeavoured, as far as in him lay, to frustrate their researches, and to withstand the authority of the Company, by opposing the execution of the orders sent from the court of directors to the governor-general and council, to set such inquiries on foot.

Such a line of conduct could not have been adopted by the prisoner, but with a view to screen himself from the consequences, which he well knew must follow inquiry. The shifts to which he was driven to save appearances, at the same time that he wished to escape detection and punishment, served only to confirm and give additional weight to the charges that had been brought against him. Notwithstanding his desire to be thought innocent, he never once attempted to deny the receipt of the money which he was accused of having taken as a bribe; instead of attempting to defend himself, he began an attack upon his colleagues at the council board, whom he charged with partiality, and a kind of conspiracy to destroy his character. Instead of shewing that the accusation which had been recorded against him was unfounded, he endeavoured to prove, as far as bare assertions could prove it, that Sir John Clavering, Colonel Monson, and Mr. Francis, were at the bottom of this accusation, and that it was on their suggestion that it was brought.

But even if that had been as true as it was false, and these gentlemen had really encouraged others to stand for-

ward and accuse the governor-general, could it be said, that it followed from such a circumstance, that the accusation was false, and that his colleagues had suborned or countenanced false witnesses? Might it not be inferred, that the encouragement held out on such an occasion, might be no more than this — that these gentlemen would protect all persons, who, having any discovery to make relative to acts of bribery, corruption, or peculation, committed by any of the Company's servants, would stand forward, and communicate it to the board? As it was at least possible that the motives of these gentlemen might be good, what could the world think of the only species of defence made by Mr. Hastings, which consisted in nothing but the vilifying and traducing of the gentlemen, who, in obedience to the orders of the court of directors, their superiors, were endeavouring to discover whether any, and what acts of peculation had been committed by the English in India, and by whom?

Even if these gentlemen had been animated in their inquiry by a spirit of hostility to Mr. Hastings, and had given evident marks of a determined resolution to represent him to the court of directors as guilty of peculation, still, as in pursuing the inquiry, no matter with what motive, they were in point of fact acting in obedience to the orders of their superiors, it was the duty of the accused at least to declare that the accusation brought against him was unfounded. Had Mr. Hastings done this, he might have availed himself afterwards of the advantage which this supposed hostility of his colleagues would have given him, and made it a collateral part of his defence. But from the day on which the charges were first brought, down to the present moment, Mr. Hastings had never once ventured so much as to say that the grounds of the charges were false, and that he had never received the specific sums of money which he was accused of having taken as bribes.

But it was a much easier task to rail at his colleagues than to disprove the charges. Unfortunately, however, for

Mr. Hastings, the characters of those colleagues stood far beyond the reach of his calumny. The gentleman amongst them, against whom the governor-general levelled his most bitter invectives, and whom he considered as most hostile to him, was the late Sir John Clavering, whom many of their lordships must have known. No one who had ever been acquainted with that worthy man, or with his character, but must feel that such a person was incapable of acting under the impulse of the pitiful motives to which Mr. Hastings had ascribed his conduct. The world knew that he had passed through the different degrees of the military profession with a character, which pointed him out as a model for the whole army to imitate. His reputation for unimpeachable honour and inflexible integrity, endeared him to all his acquaintance, and to the whole army. His heart was as free from the meanness which prompts some men to supplant others, or to injure them in their good name, as his reputation was from stain or blemish. In a word, Sir John Clavering was no less an ornament to human nature, than to his profession; he was as good a man, as he was an able officer.

What advantage, then, could Mr. Hastings expect to derive from an attempt to impute base or dishonourable motives to such a person? This was a question to which Mr. Burke said he would give no other answer than this — that the prisoner must have thought it safer to do or say any thing rather than plead to the charges brought against him, or suffer the inquiry to proceed, whilst the possibility of crushing it was still in his power. In point of fact, Mr. Hastings derived no advantage from this attack upon Sir John Clavering and his colleagues. The court of directors, to whom all the minutes that had been entered in the council books by both parties, relative to the charges brought against Mr. Hastings, had been sent, approved in the most express and positive manner of the conduct of Sir John Clavering, and censured Mr. Hastings, for having resisted the inquiry which they themselves had strictly enjoined the council to institute and pursue; and

they further commanded the governor-general to give them satisfaction on those points which formed the heads of the accusation against him. But the court of directors could not make Mr. Hastings pay obedience to their orders. He promised, indeed, that he would explain those points; but he found means to evade the performance of his promise.

Here Mr. Burke observed, that when a person accused says he will explain the grounds of the charge, he must be considered as admitting the facts upon which the charge is founded, though he might afterwards deny the inferences drawn from them: for none could be so absurd as to explain what had no existence. But this explanation had never yet been made. The excuse pleaded by the prisoner whilst he was in India was, that as the charges might be made the grounds of a prosecution, or a suit in a court of law, he ought not to disclose his defence in the first instance; but to reserve it till he should be called upon to make it before a proper tribunal. Since his return to England, his excuse was, that as no suit or prosecution had been commenced against him, he considered the business as dropt, and a defence consequently unnecessary. Thus this excellent master of the science of defence was able to parry off the necessity of explaining his conduct by means the most singular and opposite. If the accusation was to end in a trial, he was not to explain before trial; and if the prosecution was suffered to sleep, then there could be no necessity for an explanation: so that the charges might remain unanswered for ever.

Mr. Burke begged leave to make a remark or two upon the danger which the prisoner affectedly said might attend him, if he was to explain the grounds of the charges, whilst there was a possibility that they might terminate in a trial. From the good fellowship in which it had appeared to their lordships, that Mr. Hastings and Sir Elijah Impey lived, whilst they were in Bengal, they would see that the former could have no great occasion for much anxiety about the event of any suit that might be instituted

against him in the court of the latter. Sir Elijah Impey was not a man likely to strain the law to make it reach Mr. Hastings, particularly when such a straining must be to favour a false accusation against his friend. The prisoner, therefore, could not be deterred by any apprehension of danger in India, from an explanation of his conduct.

The next thing, then, to be considered was, whether he had any thing to apprehend in a court of law in England, from such explanation. He certainly had not, if Mr. Hastings himself might be believed: for in recommending to the court of directors a plan, which he himself had proposed in the early part of his administration, that would have left all the Company's servants in India at the mercy of the governor-general, who might dismiss them from the service without giving them a hearing, he said, that "the forms of proceeding, and rules of evidence laid down and established in the courts of law in England, would rather facilitate the escape of an Oriental delinquent from punishment, though the cries of the people should call for vengeance on him, than enable the country to bring him to punishment." Upon this principle, then, it might be said, that Mr. Hastings had sheltered himself from the necessity of explaining his conduct, under the apprehension of a trial from which he had nothing to fear; not because he was innocent, but because the law could not reach him, on account of the particular circumstances of places, persons, and distance.

The scruples and delicacy of Mr. Hastings might therefore be safely pronounced to be affected, or assumed only for the purpose of evading the promise of an explanation, because he knew he could not explain away the force of the accusation, or establish his innocence. If it had been from an idea that it would be lowering his dignity to defend himself against charges which he conceived to be countenanced by those whom he considered as his enemies in the council, surely he would have availed himself of the opportunity which the death of Sir John Clavering and

Colonel Monson gave him, and by which he was reinstated in the plenitude of power, to prove that those gentlemen had been actuated by malice against him, and that the charges had not even a shadow of foundation in truth.

But had he, since their death, attempted to prove any such thing? No; he had ever since observed a silence upon those charges, which nothing could force him to break. Innocence owed it to itself to plead at least "not guilty," and declare a false charge to be so. But Mr. Hastings had not paid even this faint tribute to innocence. Why? Because he was not innocent. Guilt had put a seal upon his lips, which nothing could break.

Had there been in the breast of Mr. Hastings a spark of that honest indignation which never fails to fire the breast of an innocent person wrongfully accused, the language and sentiments which Sir John Clavering had held and entertained of him, and which he had recorded in the archives of the East-India Company, would have made it blaze forth. In a minute entered by Sir John, and which was read by Mr. Burke, that general declared, "that Mr. Hastings had made himself a degraded character in the eyes both of India and of Europe, for his peculation, his corruption, and oppressions." Even such language as this had been unable to make Mr. Hastings vindicate his innocence and his honour, by entering upon his defence. He did not dare to defend himself, because he knew he cold not but disclose his guilt, if he was to attempt to answer the charges.

What, said Mr. Burke, could make this proud and haughty ruler of India submit to such language, and bear with such opprobrium? Guilt, conscious guilt! The cursed love of money had got possession of his soul; and in the contemplation of his detested wealth, he found sufficient consolation for the loss of character and of honour. Under the lash of Sir John Clavering, and the execration of all Asia, he seemed to say with the poet—

——Populus me sibilat, at mihi plaudo
Ipse domi, simul ac nummos contemplor in arcâ.

It was this love of money that made him deaf to the calls of glory, and callous to the feelings of honour. It was this unbounded and insatiable passion for money that had seared his conscience and his feelings; and happy in the accumulation of wealth, even by the foulest means, he could bear, unmoved, the most cutting reproaches of Sir John Clavering: 'He lay down in his stye of infamy, —wallowed in the filth of disgrace—and fattened upon the offals and excrements of dishonour. He suffered his name to be branded not only to cotemporaries, but to posterity, by the charges and observations recorded by Sir John Clavering against him in the archives of the Company. Whilst that gentleman lived, Mr. Hastings did not dare to meet those charges; nor had he attempted to give the least answer to them even after his death; they remained to this day unanswered, and unrefuted.

Posterity would not credit the aspersions to which Mr. Hastings had had recourse, instead of a defence, and which he dealt so liberally upon Sir John Clavering and his colleagues. The records of the Company would shew how little those aspersions were founded. The panegyrics pronounced by the court of directors upon Sir John Clavering, and recorded in their archives, bore a glorious testimony to the honour, character, and merits of that great man. When, tired out by the constant opposition given by Mr. Hastings to the execution of every plan either recommended or commanded by the Company, Sir John Clavering sent home a resignation of his seat at the council board, the court of directors refused to accept it, and gave for reason, that his retreat from the council would be an irreparable injury to the Company's service. They, at the same time, bestowed the most unequivocal and unqualified approbation on the whole of his conduct whilst he had been in their service; and intreated him, by his love for his country, not to think of resigning a situation in which he had already done so much good, and in which so much more remained to be done.

Sir John Clavering died soon after, and literally of a broken heart. Mr. Burke read from one of the Company's books part of a letter written on that occasion to the governor and council by the court of directors, in which they spoke in terms of the most warm panegyric of the deceased, and expressed a deep concern for the heavy loss which the Company had sustained by his death.

Here Mr. Burke asked, if such a man, so revered and honoured, was capable of bringing unfounded accusations, or countenancing false accusers? He asked, whether there was a man upon earth, how bold soever he might be in conscious innocence, Mr. Hastings excepted, who would have thought lightly of charges countenanced by such a man as General Clavering? He said he was sure that every man, who had a character that could be injured by an accusation, would have thought it necessary to defend it, when the name of Sir John Clavering was in any degree connected with the charge; because such a name would give a weight to it, in the opinion of the world, even though the witnesses might not be the most unimpeachable men. Why then did not Mr. Hastings meet the charges under such circumstances? Because, said Mr. Burke, he was guilty, and could not but expose his guilt, by attempting to disprove it. This presumption against the prisoner grew naturally out of his silence, which, in the opinion of all impartial men, ought to be considered as tantamount to an admission of the charges.

Mr. Burke next observed, that the prisoner had invariably mistaken his own situation; he considered the Company, in the case of the charges alluded to, as plaintiffs and prosecutors, and himself as a defendant; whereas the true relation in which they stood to each other, was that of masters and servant. When the directors required him to explain the grounds of his conduct in this case, he declined obedience to their requisition, and said he would reserve his defence for a court of law. Mr. Burke asked their lordships, what any one of them would think of such language from his steward? If a steward was sus-

pected or accused of oppressing the tenants, dilapidating the estate, and embezzling the rents, and his lord should desire him to explain his conduct, and remove the grounds of suspicion, what would be the astonishment of that lord, if he should hear his steward reply, "I will give no explanation now; bring your action against me; I will reserve my defence for a court of law!"

This was the precise language that Mr. Hastings held to the court of directors, his masters, to whom, as their servant, he owed obedience, and to whom he was of course bound, when they required it, to explain his conduct. But it was not very surprising that a man should pertinaciously withhold explanation, however goaded he might be to give it, when explanation could serve only to confirm the accusation. Mr. Hastings relied, however, for an excuse upon one circumstance; and that was, that the Company had ordered a case to be made for the opinion of counsel, whether there were grounds in the charges brought by Nundcomar, upon which a prosecution against Mr. Hastings might be maintained by the Company. The prisoner plumed himself upon the opinion given by the counsel, which was against a prosecution.

But Mr. Burke said, that considering the manner in which the case was stated, it was not possible for the counsel to recommend a prosecution. It was not wantonly that he would bring in the names of other people into a business, in which he meant to criminate Mr. Hastings only; but he must say this of the case in question, which was made out for counsel, that it was not fairly or truly drawn. He charged it with misrepresentation, suppression, and falsification. The Company's solicitor, Mr. Smith, who drew the case, had not been long in his situation as solicitor to the Company, when the case was drawn up; and probably many of the historical parts of it were supplied by some persons at the India-house, who were friends to Mr. Hastings, and who consequently wished to make out such a case as must make counsel advise the Company not to bring a prosecution against the governor-

general. But though, in justice to Mr. Smith, he premised this observation, he must add one other observation respecting that gentleman, and say, that it appeared, and was rather a singular circumstance, that the very man who made out that case for the opinion of counsel, was at this moment the solicitor of Mr. Hastings, and conducted his defence.

Having stated this, Mr. Burke made several remarks upon the case made by Mr. Smith. Misrepresentation, he said, was to be found in the very outset, where it informed the counsel, that Mr. Hastings was accused of having improperly received certain sums of money from the guardian of the nabob of Bengal. Now this was not all the ground of the accusation. Mr. Hastings was not charged with having taken money from the nabob's guardian, but for having removed that prince's own mother from the guardianship of her son; and for having sold that office for a sum of money to the nabob's step-mother, who had been a dancing girl, and consequently a prostitute.

After such a statement at the outset, their lordships might naturally expect that the whole was calculated to prevent a prosecution — which was precisely the fact. For to the case was subjoined an appendix, consisting of all the minutes entered by Mr. Hastings in the Company's books, with a view to destroy the credit of the witnesses who were to support the charges. But not a syllable was added of the minutes entered by Sir. John Clavering, Colonel Monson, and Mr. Francis, in reply to the former, and in vindication of the witnesses, and defence of the charges. Who, then, could advise a prosecution, when the only witnesses who were to support it were described to the counsel as infamous, and undeserving of any degree of credit?

Having dwelt long upon this point, Mr. Burke reverted to the case of Mahomed Reza Khan. This person, he said, had been reinstated in his office of chief justice, by General Clavering, Colonel Monson, and Mr. Francis; and the dancing girl, Munny Begum, was removed from the administration of affairs. But no sooner were General Cla-

vering and Colonel Monson dead, than Mr. Hastings, who by their death had acquired a majority in council, dismissed Mahomed Reza Khan again, and resolved to restore the dancing girl to her former power.

To give a colour to this proceeding, and so to blind the public, as that they might not think he had any hand in this latter part of the revolution, he procured a letter to be sent to him by the nabob, in which his highness stated, that being then arrived at an age of discretion, it was his desire to take into his own hands the appointment of his officers, and to commit to Munny Begum, of whose prudence he had the highest opinion, the management of his affairs. Three days after, this letter was followed by another, in which the nabob complained that it had been rumoured that the former letter had been procured from him by the influence of Munny Begum, and without his own approbation. This report, he said, was injurious to his honour; and he called upon Mr. Hastings to name to him the authors of the rumour, that they might be punished. The whole of this proceeding, Mr. Burke said, was truly farcical; for Mr. Hastings himself had always described this prince as a man of no parts, and incapable of directing or superintending any affair of importance. This description of him was confirmed by letters from Lord Cornwallis. And yet this was the prince to whom Mr. Hastings affected to think he was bound to commit the administration of the Nizamud.

Though it was well known that this prince was allowed only the shadow of royalty, and was in reality no more than a pensioner of the Company, Mr. Hastings said, that as he was a sovereign prince, his rights, and particularly the appointment of his own officers, could not be with-held from him without injustice. But upon another occasion, Mr. Hastings shewed he made light of those sovereign rights, and disregarded them at pleasure. For when a reconciliation took place between him and Mr. Francis, the latter stipulated as a condition of it, that the honest Mahomed Reza Khan should be restored to the office of chief justice.

Mr. Hastings accordingly wrote to the nabob, desiring, without any ceremony, that he would dismiss the chief justice whom he had lately appointed, and take back Mahomed Reza Khan. The sovereign prince, who had been made to speak in a lofty tone of his right to appoint his own officers, instantly obeyed the mandate, and Mahomed was restored. But soon after, when Mr. Hastings thought he could do without the support of Mr. Francis, who had sacrificed his own opinion on many smaller points to a regard for the public service during the Mahratta war, he once more removed Mahomed; and Munny Begum was restored to the full possession of the government.

Thus in the short space of two or three years, had four revolutions been effected in the native government of Bengal, by Mr. Hastings, and for corrupt purposes. In the first instance, he had received three lacks and a half of rupees for putting the government of the country into the hands of a dancing girl: but it was not to be supposed that he received no more; there was reason to believe that he got 100,000*l.* but the receipt of the three lacks and a half could be proved by something stronger than suspicion.

It could be proved also that he had received 16,000*l.* more, which was charged under the head of entertainment: but this was only a name given to conceal a bribe; for Mr. Hastings had charged the Company 3000*l.* for his expences whilst he was at the place where this supposed entertainment was given. This was a pretty round extra sum for a man's table for three months, who, let him be where he would, must eat; and by charging for his table, he saved those expences which he must have incurred had he remained in Calcutta. An entertainment that might cost 200*l.* would not ruin or embarrass the nabob; and Mr. Hastings might have partaken of it without any impropriety; but when the nabob was charged with a like sum daily, for three months, their lordships would see that the revenues of that prince must be unequal to such an expence; and the man could not be said to have any regard

for him, for the Company, or for his own honour, who would suffer such an expence to be incurred.

It was no excuse for Mr. Hastings to say that such entertainments to visitors were customary in India, and that he ought to conform to what he found to be an established custom. It was a maxim in law — *malus usus abolendus*. That must be a bad custom which ruined the fortunes of individuals; and Mr. Hastings, so far from thinking it was his duty to conform to it, should have made it a point to abolish it, if possible, by discountenancing it. Lord Coke, speaking of the Brehon law in Ireland, and the coshering, &c. that was countenanced by it, to the ruin of the tenantry, called it "a lewd custom;" and blamed the English settlers in Ireland for having conformed to it, instead of abolishing what they saw was a grievous burden to the people. The censure pronounced by that judge on the English in Ireland was not less applicable to the English in India. That it was usual in India to entertain visitors in a stile of magnificence was not a good plea in the mouth of Mr. Hastings. He was not at the time alluded to a visitor; his journey to Moorshedabad had more of a visitation in it than a visit, and was attended with lamentable effects to those hundreds of nobles who were deprived by Mr. Hastings of their daily bread.

There was a striking proof against Mr. Hastings, which shewed that the money charged under the head of entertainment had not been expended in entertaining him, but had actually found its way into his own pocket. And this proof was, that no one in Moorshedabad had seen or heard of these costly entertainments. Of all the virtues there was only one which derived lustre from concealment; and that was charity: publicity was part of the splendour of all others, particularly of hospitality. When an entertainment was given to great personages, preparations were made, and numbers of guests were invited to do honour to those for whom the feast was made: but when a prodigious sum, such as 16,000*l.* was said to have been expended in an entertainment, which had made no noise, which had

not been heard of in the city where it was supposed to have been given, it was natural for people to suspect that there was a mystery in the business, calculated to conceal some transaction which could not bear the day.

Mr. Burke having got thus far, informed their lordships, that he would not take up any more of their time this day; but he should, he hoped, be able to conclude his opening the next day he had the honour of addressing their lordships. He observed that there were two grounds of evidence on which he intended to support this charge; the one arising from concealment; the other from detection, or confession of the prisoner, who finding it impossible to conceal any longer from the scrutinizing eye of parliament his many and enormous bribes, at last confessed that he had received certain sums of money privately, and made a merit of discovering what he said he might have kept for ever from the knowledge of the world. One of these two grounds of evidence, Mr. Burke said, he had already opened to their lordships; the other he intended to open as briefly as possible at the next sitting of the court.

Here Mr. Burke concluded for the day.

THIRTY-NINTH DAY.

Tuesday, May 5.

Mr. Hastings having been brought to the bar, and proclamation being made,

Mr. Burke rose. He said, that in obedience to their lordships' proclamation, he would proceed to make good the charges brought against the prisoner at the bar by the Commons of Great Britain in parliament assembled; but before he should enter into the proofs of those charges, he begged leave to inform their lordships, that since he had last had the honour of addressing them, an event had taken

place *, upon which it was extremely difficult for him to speak, but which, at the same time, it was impossible for him to pass over unnoticed. At the last sitting of the court he had stated to their lordships, in the course of his speech, that the prisoner had murdered Nundcomar by the hands of Sir Elijah Impey. But this position he was no longer at liberty to support; for in what he had said upon it, he was disavowed and disowned by his principals, the House of Commons. Their lordships were not, therefore, to expect that he would attempt to support by evidence an assertion which, however it might appear to himself to be well-founded, was discountenanced by those who had ordered the prosecution, and had commissioned him to conduct it. It was the province of the House to command those who acted under its authority, and it was his duty to obey.

But at the same time that he professed his readiness to obey the commands of his principals, their lordships, he hoped, would suffer him to say a word or two by way of apology for that part of his conduct which had brought upon him the censure of those whose approbation it would be his ambition to obtain, and his study to deserve. When he said that Nundcomar had been murdered by Mr. Hastings, he never could have meant to accuse the prisoner of the specific crime which the law called murder. He was a little too well acquainted with the laws of his country to entertain an idea, that murder was a crime which was to be tried by impeachment. What he meant, therefore, by the word murder, in the sense in which he had used it, was not the crime which the law distinguishes by that name, but a crime which in reason and common sense must be considered of at least as great atrocity.

From all that he had learned in the course of nine years' inquiry into the administration of justice in Bengal, he had been so clearly convinced in his own mind that Nundcomar had been taken off solely for the purpose of

* See Vol. iii. p. 420.

throwing a discredit upon the charges brought by that unfortunate person against Mr. Hastings, that as long as he should speak his own private opinion, he would not hesitate to say, that Nundcomar had been murdered by Mr. Hastings. So deeply was this conviction rooted in his heart, after nine years' inquiry and deliberation upon the subject, that it could be torn from him only with his life. And, therefore, though he was willing to admit that the word murder, applied to the case of Nundcomar, did not convey the idea that he had conceived of that fatal event, still he maintained, that as the poverty of our language did not afford any other word more particularly descriptive of the crime which he thought might fairly be brought home to the prisoner, he had been reduced to the necessity of calling it a murder. If he could have discovered any other word that would more forcibly convey his idea of the atrocity of the prisoner's guilt, he never would have used the word murder —he had been driven to it only by his not having been able to find a worse.

His private opinion, however, was not to stand in competition with the opinion of the House of Commons, but to give way to it. It was not for him to consider how the Commons could have learnt in some few days, that the result of nine years' labour bestowed by him upon this subject, did not furnish a ground for charging Mr. Hastings with having conspired against the life of Nundcomar, as the only way to destroy the accusation brought by that unfortunate man against Mr. Hastings. It sufficed, that the House of Commons had declared its opinion on that subject; which opinion should be a law to him. And therefore he would not, in the course of the trial, say one word about the conviction and execution of Nundcomar, let them be urged ever so forcibly by the prisoner against the credit of that person, unless the Commons should give him fresh instructions on that head.

Indeed, it never was his intention to offer any proof to their lordships respecting the circumstances of the condemnation and execution of Nundcomar, except with a view

to rebut the discredit which Mr. Hastings might be advised to endeavour to throw upon the accusation brought against him by Nundcomar, by shewing that this man had afterwards been condemned and executed for forgery. That Mr. Hastings entertained an idea of discrediting the accusation of Nundcomar by such means, appeared from his own defence at the bar of the House of Commons, where he actually declared it. It was very natural, therefore, for him who was to manage the impeachment, to maintain the credit of Nundcomar, whose testimony was one of the chief supports of the present article of charge relating to presents.

However, as the Commons had been pleased to censure him for having mentioned the death of Nundcomar as a charge against Mr. Hastings, he would not attempt, in the course of the trial, to shew that Mr. Hastings, had any hand in that death. He would leave it to be supposed that an execution, which at least for that time put an end to a charge then pending against Mr. Hastings, and which was consequently a most useful event to him, had been effected by a "fortuitous coincidence of circumstances," in which Mr. Hastings had no concern, but from which, happening so very opportunely, he derived the greatest advantage. He would suppose even that it was one of those "strokes of Providence which," as Mr. Hastings himself said in his defence, "the people of India superstitiously imagined always watched over his person, and conducted all his measures to their destined end." He was willing to suppose that this Providence had cut off Nundcomar just at the moment when his death could be most serviceable to Mr. Hastings.

Having made these preliminary observations, Mr. Burke read the resolution which was passed the preceding night by the House of Commons. From this resolution; he said, it appeared, that he was restrained only from proving that Nundcomar was taken off by Mr. Hastings. But he was not restrained from defending the credit of Nundcomar by any other way. Thus, though he was not left at liberty

to prove that a prime minister of a great kingdom, who had had under his sole management a revenue of 1,500,000*l.* a-year, and who had been tried for a paltry forgery, supposed to have been committed eleven years before his trial, and under the authority of an English act of parliament, passed after the pretended commission of the crime, was prosecuted, not with a view to satisfy public justice, but to stop the course of it; still he was at liberty to repel the attacks made by Mr. Hastings on the character of Nundcomar, when he charged that unfortunate man with other forgeries, which had no connection with the pretended crime for which he suffered death.

It was a maxim received in some of the revolutions of philosophy, that when a limb was cut off from the human body, the strength of the others was proportionably increased. And therefore, said Mr. Burke, to speak according to that maxim, this one limb of our charge being cut off, the others will be proportionably strengthened; and we shall proceed, even in our maimed state, with more vigour and energy than we displayed before.

He then begged their lordships would not impute to the House of Commons, or to their cause, any part of that weakness which belonged solely to him, their agent. Whatever was energetic, right, and regular, should be imputed to the Commons; what was feeble, wrong, or irregular, should be laid exclusively at his door. The Commons, in censuring him, did not mean to throw the least damp upon the impeachment; for though they had censured and disavowed him, they had again sent him to prosecute the same impeachment, with the same colleagues, against the same defendant, and at the same bar at which he had originally opened it. They had raised a theatre to justice, on which the eyes of all the world were fixed, and in which the honour of the Commons, and of the British name, was deeply concerned. It was for the Commons who had brought the prosecution, because they were convinced of the prisoner's guilt, to speak with confidence of it: but it

was the province of their lordships to believe nothing advanced by them, that should not be made out in proof.

Having stated this, he observed that Mr. Hastings had, in his defence at the bar of the House of Commons, charged Nundcomar with having forged two letters, one from Munny Begum, the other from the nabob Yetram ul Dowlah. But it so happened, that Mr. Hastings defeated those charges at the very moment he brought them. For he shewed, that the pretended forgery of a letter from Munny Begum was supported only by his own testimony.— "I have since been informed," said he, "that she (Munny Begum) was totally unacquainted with the use that had been made of her name, till I informed her of it." This assertion, Mr. Burke said, rested solely upon the authority of Mr. Hastings himself, unsupported by any one witness. It was true, indeed, he referred to a witness, for he said in his defence — "Mr. Middleton, whom she consulted on the occasion, can attest the truth of this story." But Mr. Hastings ran no risk in referring to Mr. Middleton, who could not contradict him — and for the very best reason, because that Mr. Middleton was dead. *

The other charge, respecting the forgery of a letter in the name of the nabob Yetram ul Dowlah, was still more extraordinary; for though Mr. Hastings did not hesitate to call it a forgery, he admitted that he knew nothing of the matter, as appeared from his defence, where he says — "I have not yet had the curiosity to inquire of the nabob Yetram ul Dowlah, whether his letter was of the same stamp; but I cannot doubt it."

Mr. Burke adverted next to the presents and bribes taken by Mr. Hastings. To prove that to take presents in any shape, or on any account, was made penal in every servant of the East India Company, he read the act of parliament, by which the penalty was imposed; and he quoted a minute, written by Mr. Hastings himself, in which,

* He was brother to Mr. Nathaniel Middleton, of famous memory.

speaking of the bounty offered by Sujah ul Dowlah to the Company's troops, that had assisted him in the extermination of the Rohillas, he declared that the unlucky discovery of this act of parliament convinced him, that the troops could not accept of this bounty. He said he would be glad to lay aside the act, but it was irresistible.

Mr. Burke remarked, that if troops could not accept of a bounty from a prince, who by their bravery and blood had acquired millions, *à fortiori*, the Company's civil servants were precluded from taking presents.

But Mr. Hastings, it seemed, had made presents and bribes a source of revenue, and had received them for the benefit of the Company. But this, exclusive of the shameful idea of establishing an exchequer of bribes, was a weak pretence; for it was a maxim in law, that when a man pays a sum of money, and gets no consideration for it, he can recover it by action. Thus, Mr. Hastings could be sued by any individual for a sum so paid to him; and if it had found its way into the Company's treasury, Mr. Hastings, after having been compelled to refund to the original donor, could recover from the Company all the monies that had been so lodged in their treasury. Of this the court of directors were aware; for they sent out orders to the prisoner to receive no private sum on their account; and they bound themselves to repay any that had been so received already.

Mr. Burke took infinite pains to pursue through all their mazes what he called the arts of the prisoner to conceal the sums he had privately received, and to disguise them under false accounts. We cannot pretend to follow him through all his statements, interspersed with various references to letters written by the prisoner on the same accounts, and all contradictory. He instanced the accounts of three lacks of rupees, which were described in one account as the joint property of the Company and the prisoner; two belonging to the former, and one to the latter. In another account, the three lacks were described as the sole property of the Company; and in a third ac-

count, as the exclusive property of Mr. Hastings. Now, it was pretty remarkable, that though at first the Company was represented as the owner of two thirds of this sum, Mr. Hastings took the Company's bonds for the whole. And though in the third account he stated the money to be his own, he said he afterwards indorsed the bonds to the Company, meaning thereby to declare that they did not belong to him. These different prevaricating accounts proved, he said, that the views of Mr. Hastings in taking the money were originally corrupt.

Mr. Burke touched next upon the bribe of three lacks of rupees received by Mr. Hastings from Rajah Nobkissen. The prisoner's own account of the transaction was as follows: — "In the year 1783, when I was actually in want of a sum of money for my private expences, owing to the Company not having at that time sufficient cash in their treasury to pay my salary, I borrowed three lacks of rupees of Rajah Nobkissen, an inhabitant of Calcutta, whom I desired to call upon me with a bond properly filled up; he did so; but at the time I was going to execute it, he entreated I would rather accept the money than execute the bond. I neither accepted the offer nor refused it, and my determination upon it remained suspended between the alternative of keeping the money as a loan to be repaid, and of taking it and applying it, as I had done other sums, to the Company's use. And there the matter rested till I undertook my journey to Lucknow, when I determined to accept the money to the Company's use," &c.

Mr. Burke said, that the observation which was applied to the fair sex, that "the woman who deliberates is lost," might be applied to a person to whom a bribe is offered; for whoever deliberates about taking, is sure to take it in the end; as was the case with Mr. Hastings. The generosity of the noble-minded Rajah Nobkissen overcame him. This Nobkissen was a banyan; and if there was any thing more flinty, more griping, more thrifty, or more careful to improve the value of money than a Jew, it was a Gentoo banyan, or money broker. And yet such a man refused

a bond for his money, and entreated it might be taken as a present! Their lordships would of course expect, after such a transaction, to hear of this Nobkissen again; and so they would, for he had been appointed to the collection of the revenue of a large district, and was behind-hand in his payments to the Company, in at least as large a sum as was that which, no doubt, for corrupt purposes, he had given to the prisoner.

Mr. Burke next adverted to the present of 100,000*l.* received by the prisoner from the nabob of Oude, the receipt of which he had disclosed, as he had said himself, for no other reason, than that it was of a magnitude not to be concealed, and which he desired the Company would give to him as a reward for his services, or, as he should have said, for his false, fraudulent, covetous, and prevaricating accounts.

The last thing on which Mr. Burke touched was the letter written by Mr. Hastings from Cheltenham, to the court of directors, in which he endeavoured to avoid giving the account which they pressed him to give, of all the sums privately received by him for their use, together with the names of the persons from whom he received them. This letter Mr. Burke described as sui generis, as unique in its kind, and not to be paralleled in the annals of mankind.

Mr. Burke said he would not detain their lordships any longer that day. There remained, he observed, very little more for him to say in the opening of this charge; and he assured them he should be able to say it in a very short space of time the next day of meeting; and then he would proceed to give in evidence, irrefragable proofs of all that he had alleged in the course of his speech.

Mr. Burke then sat down, and their lordships adjourned.

FORTIETH DAY.

Thursday, May 7.

Mr. BURKE resumed the subject of the bribes taken by Mr. Hastings. Some of these, he said, were, as he had already observed, according to the prisoner's own words, "of a magnitude that could not be concealed," and therefore, as he knew that some account of them would reach the ears of the directors, he thought he would have some merit to plead to the court, by making the discovery himself. But he resolved at the same time to make it in such a way as would, in his opinion, baffle all inquiry, and ultimately conceal what it appeared to be the object of the discovery to reveal.

Accordingly, the account he gave of the presents was so obscure, that the court of directors could not see their way through it. If Mr. Hastings ever gave any explanation, it was to puzzle the first account, and to add obscurity to that which had but too much of it before.

His memory being weak, he was reduced to the necessity of guessing what might have been his motives for concealing at first the receipt of the sums in question, and for making the Company debtor to him for its own money; and after having substituted guesses in the room of accounts, he confessed, in his famous letter from Cheltenham, that he was not sure that the motives which he guessed had influenced him, were those by which he had actually been influenced.

Mr. Burke said, that when a mystery was thrown over accounts, to conceal something from those who ought to inspect them, he suspected that it was used for the sole purpose of covering a fraud. He admitted that there might be occasions, when the accounts of a nation might with propriety be kept from the eyes even of persons filling considerable offices under government; but there could not occur any one case in which it would be proper to keep accounts from the knowledge of those who were

at the head of the executive government. And therefore he presumed that Mr. Hastings was conscious of guilt, when he with-held from the court of directors the account of the receipt and expenditure of money which belonged to the Company, and which it was their department to direct and controul. Mr. Hastings might he said to withhold the accounts in question from the knowledge of the directors, when he gave them only such accounts as they could not understand, and when he explained them only in such a manner as to render them, if possible, still more obscure.

Concealment seemed to be the wish of his heart. When he was called upon in India by the court of directors to give those accounts, his answer was, that he would give them satisfactorily on his return to England. But when he did return, and the directors again pressed for the accounts, he referred them to India, where, he said, were the only accounts of the presents that were in existence. To his own memory he could not trust one moment; but he believed Mr. Larkins, the Company's accountant-general, was possessed of all the particulars relating to those presents. Thus did Mr. Hastings always set one half of the globe between the questions put to him and his answers. For when he was in India, he always said that it was in England he could satisfy the wishes of the directors; but when in England, he said it was only in India they could procure the accounts they were so anxious to obtain.

The directors having been thus referred to Mr. Larkins, sent him orders to transmit to them particular accounts of all the sums of money privately received by Mr. Hastings for the use of the Company, and paid into the hands of Mr. Larkins. The answer of Mr. Larkins was to have dispelled the mystery which hung upon this business; but unfortunately it left it involved in its original obscurity. For it was any thing but satisfactory. The account contained in this answer might be called geographical and chronological, but by no means satisfactory.

It stated the places where the money was paid, and the times when it was received, but said not a syllable about the persons by whom it was given, or the purpose for which it was advanced.

Some things, however, were to be found in this answer, which would lead their lordships to presume, that the account given by Mr. Larkins, though it should be thought to contain all that Mr. Larkins knew of the matter, was very far from being a full account of all the bribes and presents received by Mr. Hastings. Some part of the account transmitted by Mr. Larkins, was stated by that gentleman to have been read to him out of a Persian paper, by a Persian agent of Mr. Hastings; but it did not state that the sum mentioned in the part of the paper so read, was the only one of which that paper contained an account.

It was evident also, from the account sent over by Mr. Larkins, that Mr. Hastings had not a superintendant-general of bribes, to whom all the inferior agents, employed in this business, gave particular accounts of the sums raised by them for the use of Mr. Hastings, or, to adopt his own idea, for that of the Company. Mr. Hastings was too careful to trust too much to one man; he had agents of every country, complexion, and religion; but no two of them were acquainted with the business which their principal was carrying on: each thought himself the only one trusted in money matters, though the number actually trusted was very considerable.

It appeared also, from the account made up by Mr. Larkins, that if it had not been for him, who had reminded Mr. Hastings, that he had promised to send home some accounts to the court of directors, even some of the memorandums, out of which Mr. Larkins formed a part of his answer, would never have been collected from some of the prisoner's black agents.

Their lordships might well be surprised, that Mr. Larkins, into whose hands, as the Company's accountant-general, Mr. Hastings boasted he had paid many of the sums received by him for the Company's use, should have

made no observation upon the very singular conduct of the prisoner, who paying into the Company's treasury the Company's own money, as he called it, took bonds for that very money, payable to himself; thus making the Company his debtor for their own money.

There was one circumstance more to be found in Mr. Larkins's account, which must convince their lordships, that the system of bribery was carried on in a manner which shewed that it would be an herculean task to destroy it. Mr. Larkins said, that even if he himself had been suspected of perjury, he would not have made out the account; because he conceived it would be contrary to his engagements to do so; and therefore he could not have thought himself warranted in doing it, if he had not had the permission of Mr. Hastings to reveal what he knew of the business. Such was the bond of union by which all those were engaged to each other, who had any share in the business of bribes and peculation, that the sense even of public duty could not shake it; and even the Company's accountant-general would not transmit to his masters their own accounts, if he had not first obtained the leave of Mr. Hastings to obey the lawful orders of his superiors! Thus did these gentlemen couple a nice sense of honour with infamous peculation, private fidelity with public treachery, and patriotism with measures which tended to destroy the character and honour of their country!

Mr. Burke entered into a minute detail of the peculations in Dinagepore, from whose rajah 30,000*l.* had been extorted. He touched upon the bribes received by Gunga Govin Sing, and by Mr. Hastings's black agent, Cantoo Baboo. The former was by contract to have raised a large sum in another district, but did not pay above one half of it; so that between two different agents, who were to have raised 90,000*l.* only 55,000*l.* were acknowledged to be paid into the Company's treasury. The remaining 35,000*l.* either found its way into the pocket of Mr. Hastings, or into the pockets of his agents.

He next remarked upon the conduct of Mr. Hastings,

who had complained to the House of Commons, that the enormities committed by Deby Sing had been ascribed to him. But notwithstanding the complaints of the prisoner, the guilt imputed to him in those transactions should be brought home to him. And this led him to speak of the written testimonies to his character procured lately from India by the prisoner. One of them was from the rajah of Dinagepore, who bestowed the highest encomiums on Mr. Hastings, and bore testimony to his honourable, just, and equitable conduct towards the said rajah, during his administration in India.

Mr. Burke begged their lordships would give him leave to state briefly the history of that rajah. This noble person was the son of the late rajah of Dinagepore, who having no legitimate male issue, and being on bad terms with his brother, adopted this natural son, to exclude the brother from the succession. This son, at the death of his father, was scarcely six years old. It was not clear, that by the Gentoo laws, the deceased rajah could have adopted this child, whilst he himself had living a legitimate brother. However, the adoption was confirmed by the English government, and Gunga Govind Sing was appointed to administer the zemindary, during the noble youth's minority. Under this minister, all the friends and relations of the young rajah were removed from about his person; and the infamous monster, Deby Sing, was thought a proper instrument to be appointed by Gunga Govind Sing, the friend or creature of Mr. Hastings, governor to the young lord, and to be intrusted with his education. It was then, and in the country of his pupil, that Deby Sing did those acts of barbarity, which should be given in evidence to their lordships. The rajah himself was plundered of upwards of 30,000*l.* and yet it was from a person so treated that Mr. Hastings had lately procured an honourable testimony to his character!

But so far were the managers from being alarmed by this testimony, that they would themselves produce it in evidence. The rajah, as Mr. Burke had said before, was

scarcely six years old when he succeeded to the zemindary; and he was little more than eleven when Mr. Hastings left Bengal. Thus it was from a boy that this testimony was procured, which related to the measures of government that took place whilst he was a child. The other honourable testimony, in favour of Mr. Hastings, was from a person who, it should be made to appear to their lordships, had been robbed of one lack and a half of rupees.

But even though these testimonials had been obtained from persons who could not be proved to have been plundered, still little dependence could be had upon testimonies procured from natives of India, who scarcely dared to think differently from their tyrannical rulers. This was vouched by Sir Elijah Impey himself, who, in one of his letters, which should be laid before their lordships, said, that no attention ought to be paid to the letters, or petitions, or addresses of the natives of India in favour of their rulers. "Addresses," said the letter, "are procured in England through influence — in India, through force."

Having finished all his remarks upon the different heads of the charge, Mr. Burke concluded with a handsome address to the court.

My lords, said he, this prosecution is not made merely for the purpose of bringing down punishment upon Warren Hastings, and preventing future peculations in India: it ought to be considered as a great censorial prosecution, instituted for the purpose of guarding Great Britain from the vices of Asia. The people of this country have often been represented as unsocial, cold, phlegmatic, and distant: their greatest enemies, however, have always admitted that they were open, honest, candid, and ingenuous. But should the subjects of Great Britain who serve in India be suffered to pursue any longer the maxims of Asia, they will bring home her vices as well as her wealth, and both will over-run the land. Those vices, if they are suffered to spread, will destroy the genius and character of the people, who will become like the Asiatics, reserved, dissembling, plotting, treacherous, and perfidious.

But, my lords, it is not for our manners only or our morals that we have to fear, but also for our liberty. If the vices of the East would corrupt the former, its wealth would utterly destroy the latter. An intelligent poet has said —

— Opum metuenda potestas:

from the wealth of Asia our liberty may apprehend its ruin — a deluge of Asiatic spoilers and delinquents may pour into the sénate, and corrupt the sources of our constitution. To-day the Commons are prosecuting Asiatic delinquents — to-morrow those delinquents may be the Commons of Great Britain. Do you, my lords, stand forward the defenders of our constitution, and let the liberty of the Commons be preserved by the justice of the lords.

My lords, I have done.

Speech at the Close of the Trial.

One Hundred and Thirty-seventh Day, &c.

Wednesday, May 28. *to Monday, June* 16. 1794.

On the 28th of May, Mr. Burke commenced the final reply on the part of the Commons. His speech upon this occasion continued nine days. For the sake of greater perspicuity, the heads of what Mr. Burke said upon this occasion, are here thrown into one uninterrupted and connected narrative.

Mr. Burke rose. He began by saying, that this great and important business, which had so long engaged the attention of the first councils of the nation, was drawing to a close. When he considered how near the period was when their lordships would be called upon to pronounce

their judgment in this case — when he considered in how great a degree the honour of the Commons of Great Britain depended upon the conviction of the prisoner at the bar, he could not think of the event of this long-protracted trial without trembling. One of the counsel for the defendant had stated to their lordships, that the Commons had only brought Mr. Hastings before that court to clear up some doubtful points, and that they, the managers, must feel themselves happy if he should be able to establish his innocence before the world. Such an idea he begged in the most pointed manner to disclaim. The Commons of Great Britain did not come there to solve a problem: they came there to convict guilt, and to assist the cause of justice. The accusation of Mr. Hastings was not adopted by the Commons in a hurry: it was not done in compliance with popular clamour, by which sometimes even the gravest and most cautious popular assemblies may be swayed; but it was the result of long and laborious inquiry, of minute and accurate investigation. Therefore, to acquit the prisoner, would be to convict the Commons of England of deliberate, systematic error. Before the Commons brought this impeachment to the bar of the House of Lords, they had spent years in the examination of every paper, every document, which could throw light upon this subject. In the year 1782, a string of resolutions were proposed to the House of Commons by the then lord advocate of Scotland, now one of his majesty's principal secretaries of state*: those resolutions, arraigning the conduct of the defendant, were agreed to by the House; they were then referred to a committee, and the report of that committee corresponded with the former determination of the House. Not content with this, by an unparalleled instance of caution and circumspection, the matter was referred to another committee, who made a report of a similar tendency. When, after such an investi-

* Mr. Dundas.

gation, the House of Commons felt itself bound, in order to vindicate the honour of the British name in India, solemnly to accuse Mr. Hastings, he surely did not go too far in saying, that the dignity, the character, nay, perhaps, the very existence of that branch of the legislature would depend upon his conviction. He therefore begged to disclaim that false candour imputed to him by the counsel, and to say, that if — (he could hardly bring his heart to think of or his tongue to express the idea) — if their lordships should feel themselves justified in acquitting Mr. Hastings — if it should appear to them, that instead of prosecuting a great delinquent, the Commons had been prosecuting not only an innocent but a meritorious man, then he and his fellow-managers would retire from the bar covered with shame and confusion. But, when he considered the evidence adduced by the prisoner in answer to the charges brought by the Commons, he could not help looking upon such an acquittal as impossible.

It would now be necessary for him to state to their lordships the state of the prosecution. The Commons had, out of an immense mass of criminality, selected a quantity of matter, which they had arranged into twenty articles of accusation against the prisoner. In making this selection, he was not sure that they had not left behind a multitude of facts of equal atrocity with those they had brought forward. But the managers, foreseeing the probable length of the trial, and anxious to do every thing in their power to shorten it, without injuring the cause of justice, went to their constituents, and asked leave to make such a further compression as they thought would tend to obtain that object; in consequence of which the charges were reduced to four; the two first, viz. the Benares and the Begum charges, tending to shew the violence and tyranny of the defendant; and the other two calculated to display his insatiable avarice and corruption, and the scandalous means he used to obtain his purpose, and to conceal his crime. It was not his intention to trouble their lordships with any observations upon those charges, which had been spoken to

with such infinite abilities by his brother-managers; of those abilities he would say no more than that they were equal to the task — more he could not say of them. Indeed, the consideration of the great talents requisite to explain and enforce such an important subject, would have deterred him from standing forward in this business; but he had a duty paramount to any feelings of his own, namely, his duty to the House of Commons, who had commanded him to undertake the office. The House of Commons thought, perhaps, that industry would make up for the want of abilities, and therefore they had appointed him a manager. Avoiding, therefore, every thing which had already been discussed, he should confine his observations to four points, viz. the demeanour of the prisoner at the bar during the course of this trial — the principles which he had laid down, and upon which he founded his justification — the means by which his defence had been supported — and the testimonies which had been brought forward in support of those means.

With respect to the first of those four points, namely, the demeanour of the prisoner during the course of the trial, he thought it afforded ground for the most serious observation. It was such a conduct as he was sure had never been held by any person standing in the same awful predicament with the prisoner: it was not the boldness of conscious innocence, but the insolence of hardened guilt. He wished their lordships to examine the conduct of every person who had stood impeached before them, and to compare it with that of the prisoner — from that of the Duke of Suffolk, Lord Bacon, Lord Macclesfield, down to the smugglers, who were impeached in the reign of William III., and they would find that such insolent and daring demeanour had never before been displayed. Their lordships would recollect the name of Lord Verulam — in knowledge, to speak of every thing the most profound — in learning, of every thing the most various and extensive — in discovery, of every thing the most enlightened and the most penetrating, was to mention Lord Verulam. This man,

whose least distinction was, that he was a peer, a chancellor, and the son of a chief justice — this great man was not exempt from frailty. The Commons discovered some spots in this sun, and impeached him: how did he conduct himself? With humility, with a consciousness of his situation, with contrition; notwithstanding which, the court fined him 40,000*l.* — a sum equal to 100,000*l.* at the present day. It was not his wish that the defendant should be abject, should be mean; he only wished him to conduct himself with decorum to the court who tried him, and to the body who prosecuted him. But instead of this, instead of attempting to refute the charges brought against him, his whole defence consisted of recriminatory accusations against the Commons, and of testimony to his character. The charge which he made against the managers for the Commons was, that they had used the most harsh and violent language against him. In answer to this he would say, that the managers came there to maintain the cause of truth, and were therefore obliged to use the language of truth. The language of the Commons of Great Britain was rustic, but intelligible: they had not learnt the refinement of Indian corruption. The managers were accused of using language to Mr. Hastings as gross as that applied to Sir Walter Raleigh. Sir Walter Raleigh was a man of learning, a great soldier, and a great mariner: to apply the epithet of "a spider of hell" to him was absurd, and well suited to the pedantic eloquence of the man who used it. But if Sir Walter Raleigh had been guilty of corruption, of peculation, of the most mean and scandalous practices, such as those imputed to Mr. Hastings, Sir Edward Coke would have erred more against decorum than against truth in giving him such an appellation. It was the great misfortune of the present age, and nothing could more strongly prove its degeneracy, that fine and emollient names were applied to bad actions: a woman guilty of adultery, is called "gallant;" the man who committed it is always in the French, and often in the English language, called "a man of good fortune." But the managers for the Com-

mons would never shew such a false, dangerous, and novel-like sympathy. When they were describing atrocious guilt, they would use adequate terms. To the charge of delay brought against the managers by the counsel, he would say, that the managers were only responsible to the body that sent them, to whom they had explained their conduct: but he defied the counsel to prove, that any delay prejudicial to Mr. Hastings had been caused by the managers.

Mr. Burke then adverted to a petition presented at an early stage of the trial by Mr. Hastings to the House of Lords, in which he stated the expences incurred by him previous to the commencement of the trial to be 30,000*l.* Comparing this with the expence incurred by the Commons, it appeared to him enormous; he had therefore made very particular inquiries upon the subject, and was prepared to say, that the assertion in that petition was false. One item of the 30,000*l.* was 6000*l.* for copying clerks. Upon investigating this circumstance, he found that the directors of the East India Company had given orders, that Mr. Hastings should have copies of whatever papers he pleased gratis; therefore, the pretended charge of 6000*l.* was utterly unfounded.

Mr. Burke, having argued these points much at length, came to the second head which he had mentioned in the beginning of his speech, namely, the principle Mr. Hastings had laid down, and upon which he founded his justification. This principle was, that he wished their lordships to understand, that the people of India were a race of beings so much below the rest of mankind, that they had no sense of honour, no notion of equity and justice; that they had always lived in the most abject state of slavery, without property, real, personal, heritable, or of any kind whatever; that in India, to use the words of Mr. Hastings, the power of the sovereign was every thing, the rights of the people nothing. Such was the principle upon which Mr. Hastings rested his defence, and it was worthy of him; but he would shew to their lordships, by such a mass of

authority as must force conviction, that it was in every particular unfounded. Instead of having no sense of honour, their feelings upon that point were the most acute, perhaps, of any people; and innumerable instances might be cited to prove it: he could mention cases in which women in India, who had been accused and acquitted with honour, had put an end to their existence, not being able to survive the disgrace of having been accused. He could shew instances even of common soldiers of that country, who having been condemned for crimes, contended who should first be blown from the mouth of the cannon, maintaining their honour in punishment. In short, the histories of that country were full of cases, every one proving the direct negative of Mr. Hastings's assertion. That they had no sense of laws, no right of property, was an assertion equally daring and equally false; and upon this subject he would beg to refer their lordships to Mr. Halhed's book, out of the money paid for the translation of which Mr. Hastings had cheated Nobkissen. This book, which contains a most accurate digest of the Gentoo laws, not only proves that they have property, and laws to regulate it, but proves that those laws are as much founded upon justice and reason, and contain as many nice distinctions, even as our own boasted code.

Mr. Burke then cited passages from a variety of Oriental authors, proving the right of property in India, and shewing that that property had been respected by the greatest princes and conquerors, by Tamerlane, Gengis Khan, Khouli Khan, and others. But, (said Mr. Burke) the council have fancied that we compared Mr. Hastings to Tamerlane and others, and they have told your lordships of the thousands of men slaughtered by the ambition of those princes. Good God! have they lost their senses? Can they suppose that we meant to compare a fraudulent maker of bullock-contracts with an illustrious conqueror? We never compared Mr. Hastings to a lion or a tyger; we have compared him to a rat or a weasel. When we assimilate him to such contemptible animals, we do not mean

to convey an idea of their incapability of doing injury. When God punished Pharaoh and Egypt, it was not by armies but by locusts and by lice, which though small and contemptible, are capable of the greatest mischiefs.

Mr. Burke, on the 30th of May, proceeded. He said that when he had the honour of last addressing their lordships, he had submitted to them such observations as he thought necessary upon two important points, viz. the demeanour of the prisoner during the course of this trial, and the principles upon which his defence was founded. He had shewn to their lordships, that this demeanour was of a nature perfectly unusual and unknown in the annals of parliament. He had shewn, that men the most distinguished for rank and for abilities, had, when called before this high court, conducted themselves with humility, respect, and decency; and he had contrasted the conduct of those men with the presumption and insolence of the prisoner — his presumption in making a recriminatory charge upon the Commons — and his insolence, in accusing them of malice and black ingratitude to him; for the prisoner had not attempted to defend himself by answering the charges brought against him by the Commons, but on the contrary rested his whole defence on recrimination, charging the Commons with injustice in their impeachment, and, on the other hand, both the Commons and their lordships with delay in the trial. With respect to the imputation of injustice, he hoped that accusation was already answered; and as to the charge of delay, the managers for the Commons of Great Britain did not conceive themselves at liberty to account for their conduct before any other body than their constituents, before whom, if it should appear that there had been any thing unnecessary in the course of this trial, he had pledged himself to prove, that such delay could not be imputed to the managers.

As to the charge of ingratitude which the prisoner had thought proper to make against the Commons, Mr. Hastings had, towards the close of his defence, entered into a

copious detail of his own merits: it would be therefore proper for their lordships to take into their consideration what was the nature of those boasted services, and how far they could be taken into estimation as proofs of positive merit on the one hand, or, on the other, how far they could be used as a set-off or a mitigation of the crimes laid to his charge. And here the demeanour of the prisoner came properly in, as a strong indication of what must have been, and a proof that the conduct of the defendant in India could hardly have been governed by moderation; for when their lordships had witnessed the exuberant pride and daring presumption of the prisoner when standing before the most awful tribunal in the world, and accused by that body of men it was most his duty to bow with reverence and respect to, what might not their lordships conceive his pride and cruelty to have been, when armed with almost unlimited power over the weak and defenceless, when unrestrained, as he professed himself to be, by any law, and when elated with the plenitude of usurped sovereignty?

The prisoner therefore having, as he would shew in the course of what he had to say to their lordships, rested his defence, not on a denial of the charges brought against him, but on a justification of the various acts upon which the charges were founded, the question for the consideration of their lordships' determination ceased to be an issue of fact, and became an issue of law. Their lordships, he was sure, would concur with him, when he laid it down as a clear and indisputable proposition, that all powers of sovereignty were either discretionary and arbitrary, or limited. In the first case, where the power vested in the sovereign was arbitrary, there being no positive written law to guide him, the person exercising that power was bound to govern his conduct by sound political morals: on the other hand, where the power was limited, and law applied, he was bound to keep within the exact limits of that power, and to be governed by the strict letter of that law. In applying this general principle to the case of the prisoner, Mr. Burke proceeded to demonstrate, that Mr. Hastings was bound,

in the discharge of his important duty of governor-general of India, to make the statutes of Great Britain the rule of his conduct, as far as they applied; and where they were deficient in their application, he was bound to adopt the laws, rights, franchises, and privileges of the country he governed, as the guide of his conduct; and where they failed, to act upon the broad principles of the law of nations, as in all cases with foreign powers. These, Mr. Burke said, made the grounds of the present inquiry.

To carry this reasoning home to the case of Mr. Hastings, he would remind their lordships of what he was sure they very well knew, that Mr. Hastings, being the servant of the East India Company, was bound by the statutes of England which erected that Company, to obey the orders of the court of directors, without presuming in the most minute article to deviate from those orders upon his own responsibility. But see, my lords, (said Mr. Burke) how Mr. Hastings has thought proper to comply with those laws: he not only resists them, but avows openly, that he did not think himself bound to pay obedience to them. He treats the acts of our parliament with contempt, and, in the place of the wise and salutary regulations of our laws, substitutes his own arbitrary and tyrannical will. No, my lords, Mr. Hastings disdained to be bound by the laws of this country, or even to be restrained by those of Gengis Khan, Khouli Khan, or Tamerlane, who, though tyrants, respected the laws and preserved the property of those countries which they conquered, but takes for example those who had become traitors to their sovereigns, that they might be the tyrants of the people — Cossim Aly Khan, Sujah ul Dowlah, and all those usurpers and tyrants, whose principles being more congenial to his own, were deemed more worthy of imitation. These are the laws which he followed, these are the laws which he would preserve, by inducing your lordships to sanction them with the *fiat* of your approbation. [Here Mr. Burke read from parts of the defence of Mr. Hastings, passages, stating, that whenever he thought the laws of England militated against

the interests of the Company, he was at liberty to violate them.] And thus he endeavours to avail himself of his own wrong, attempts to justify one breach of the law by another breach of the law, and would vindicate his illegal acceptance of corrupt presents, by alleging the distressed and exhausted state of the Company's finances, which had been caused by his own unlawful prodigality and vicious application of the Company's treasures to his favourite system of corruption.

Mr. Burke next entered into a disquisition upon the nature of government, of which we lament our inability to give an adequate idea; but we will endeavour, as nearly as we can, to give the general scope of his reasoning. He first laid it down as a general principle, that all law and all sovereignty were derived from Heaven; for if the laws of every nation, from the most simple and social of the most barbarous people, up to the wisest and most salutary laws of the most refined and enlightened societies, from the Divine laws handed down to us in Holy Writ, down to the meanest forms of earthly institution, were attentively examined, they would be found to breathe but one spirit, one principle, equal distributive justice between man and man, and the protection of one individual from the encroachments of the rest. The universality of this principle proved its origin. Out of this principle laws arose, for the execution of which sovereignty was established; and all, viz. that principle, those laws, and that sovereignty, were thus evidently derived from God.

If, then, laws and sovereignty were sacred, as being the gift of God for the benefit of the people; and if the laws and sovereignty of India were, as he contended them to be, founded upon the same principle of universal justice, then Mr. Hastings, as a British governor, sent, not to conquer or extirpate, but to preserve and cherish, was bound to protect the people of that country in the use of those laws, and shield that sovereignty from encroachment or usurpation. How ignominiously he had acted, in direct contradiction to that duty lay before their lordships, in evidence

unrefuted by any contradictory proof, and, indeed, undenied.

Mr. Hastings had asserted, that he had got the Gentoo code of laws translated at his own expence; if it were so, 'twere good, and he should have approved of such generosity; but how did the fact really appear? So far from paying for the translation, this swindling Mæcenas, like the pious person who devoutly stole a Bible, that he might read the scriptures, defrauded the Rajah Nobkissen of it: and thus by a double stroke of ingenuity, he contrived to acquire both reputation and money. If their lordships were of opinion with him, and he thought they would hardly disagree with him, that swindling of money was bad, surely they must allow, that the swindling of glory and fame to which he had no pretensions, was not only equally atrocious, but infinitely more mean. Whether, however, Mr. Hastings paid for the translation or not, they were certainly dedicated to him: and here the charge becomes heavier against him; for it was probable he never read them, or, if he had, had acted in direct violation of them; for their lordships would perceive he was not borne out in any one of his acts by the institutions contained in that code: and if the learned council were as well skilled in the Gentoo law (which he was sorry to perceive they were not) as they were in the laws of their own country, they would find it equally difficult to defend their client in either. If, however, the Indian laws contained within them principles of august and arbitrary institution, which he by no means admitted, those exceptions to their general tendency should be produced as a justification for a person acting in the situation of Mr. Hastings; for he relied upon it, that no example of violation or oppression, however sanctioned by the great talents or usurped rank of any tyrant, should be admitted as a justification of a British governor, though that governor had the audacity to plead it as an excuse, and to follow it as an example. All these facts, he said, were in evidence before their lordships; and in all these

crimes their lordships were called upon by the prisoner to concur.

Mr. Burke next said, that Mr. Hastings had, by relying upon the examples of those chiefs alluded to, seemed to conceive himself invested with sovereign power, a proposition which he conceived utterly unfounded, because he was only the servant of the East India Company, who could not delegate to him sovereign power, because they did not possess it themselves: their right was derived from, and confined within the charter granted by parliament: they therefore having no such right in them, could not delegate it to Mr. Hastings. Sovereignty was of a nature, taken in its abstract sense, that would not admit of delegation. In England it was placed solely in the hands of the king, who was sovereign over the lords and over the commons collectively and individually: the sovereign power was entrusted to him for the public benefit, but it was utterly impossible that he could delegate it wholly and completely to any other person. But the prisoner, as if conscious that his situation under the Company was that of a servant, and not that of a sovereign, bound to obey their commands, and to act in conformity to clear and positive institutions, instead of disobeying the one, and substituting his own arbitrary will in the place of the other, had recourse to another fountain, from which to draw his right of sovereign authority, and assumes to exercise the same power as Sujah ul Dowlah had done before him — a power which extended to the property, liberty, and life of the subject: but unfortunately this source also failed him, for Sujah ul Dowlah was not a sovereign himself, but the representative of a sovereign, and of course could not give that to Mr. Hastings which he did not possess himself, unless, like Mr. Hastings, he obtained it by an abuse of the power entrusted to him, and acted the part of a tyrant when he should have performed the duty of a servant.

He had now, he hoped, shewn that Mr. Hastings's assumption of sovereign power was as unfounded as it was insolent, and this conduct was to be judged of by its con-

formity to a violation of the rules prescribed for his guidance. If their lordships were to do that which he was sure they never would — if they were to adopt the principles laid down by Mr. Hastings, by permitting a man to escape punishment who had so daringly violated every rule of government and every established law, they would do what was even worse than destroying all principles, they would establish false ones. Man, and every other animal in their most savage state, may be ferocious, may be cruel; but when the appetite is satiated, they are harmless, nay even docile. But man, when actuated by false principles firmly fixed in his mind, is infinitely more dangerous, not for temporary ferocity, but for systematic wickedness, deliberate error, perennial vice.

Mr. Burke then proceeded to shew, that the whole of the charge against Cheyt Sing was that of an unwillingness to pay a sum of money much beyond the regular tribute which he was bound to pay; a conduct for which that rajah was justifiable upon every principle of the laws of nations, nature, and morality; he being invested with all the attributes of sovereignty, and exercising all its functions. The prisoner at the bar having thus not only violated every principle of justice and general law, but having acted in direct opposition to the positive laws of England, and treated the source from which those laws were derived with contempt, was guilty of contumacy and rebellion; of rebellion, not in its abstract, but in its strict sense, overt acts of which were to be found upon their lordships' minutes, proved under the sanction of an oath, and given in as part of the prisoner's defence. But supposing any subject were not in actual rebellion, but suspected of a conspiracy against the government, how should Mr. Hastings have acted? He should, as a British magistrate, have endeavoured to prevent the effects of such conspiracy; he should have convened the party suspected before him, and have investigated the proofs of his guilt, before he proceeded to conviction and punishment. Before Mr. Hastings had proceeded to inflict any punishment, he should have con-

sidered the principle of the Gentoo law, with respect to apportioning the punishment to the rank and situation of the offender, because it must be obvious to their lordships, that the same punishment might operate much more severely upon one man than another. He should have considered also, that it was a principle in the Gentoo law, that although a magistrate might pass judgment upon a delinquent in his own house, yet in such case his house must be open to access, to prevent all suspicion of partiality or corruption. Under the Mahomedan law, he was equally bound to have informed the party of the crime laid to his charge, and to have proceeded in an open and judicial manner. Thus, under whatever law Mr. Hastings may pretend to have acted, whether English, Mahomedan, or Gentoo, he is equally guilty, because under all of them he was bound to have called Cheyt Sing before him, previous to his inflicting any punishment upon him.

Instead of acting upon these principles of law and justice, he not only never accused Cheyt Sing of rebellion, but he never mentioned to the council, to Lord Macartney, to Mr. Wheler, or to any person to whom he communicated his intention of going to Benares, any thing like a suspicion of that rajah being in a state of rebellion. In addition to the circumstance of Mr. Hastings never having informed any one person of his suspicion of Cheyt Sing's rebellion, Mr. Burke begged of their lordships to consider the actual impossibility of such an idea entering into the contemplation of that prince, as that of rebelling against the Company: in the first place, he was a man by nature extremely timid, and possessed of but a very inconsiderable district. The whole of his conduct being under the vigilant inspection of the vakeels, agents, and other creatures of Mr. Hastings, immediately under the eye of an English resident, and surrounded by a whole body of military — could he, acting under such circumstances, and possessing his sovereignty on moderate terms — could he, he demanded, think of rebellion? Could it be believed? Where could he look for safety? It could not be with Sujah Dowlah, it

could not be with the Mahrâttas, or any of the other Indian powers, who he knew would reduce him to the most abject servitude. He called upon Mr. Hastings to shew that the resident in Benares, the vakeels, or any person whatever, had ever expressed a suspicion of a rebellion; or to produce any evidence to convince their lordships of a circumstance in every point of view so improbable. "But," said Mr. Burke, "I will now produce such damning proof that Mr. Hastings did not consider Cheyt Sing in a state of rebellion, as it is impossible for him to get over; for I will read from Mr. Hastings's own words the most unequivocal admission, that at the period in which the prisoner would induce your lordships to believe that Cheyt Sing was in actual rebellion, he was not even so much as suspected of an intention towards it by Mr. Hastings." Here Mr. Burke read several extracts from Mr. Hastings's narrative from Benares, in which he says that he does not believe Cheyt Sing guilty of a premeditated project for rebellion, when he punished him for his former misconduct. Again, he declares positively, that it was not for rebellion, but for personal contumacy, that he fined him 500,000*l.*, but that after his refusal to pay that fine, he considered him as a rebel. "Here then," said Mr. Burke, "it appears from the prisoner's confession, that the only symptom of rebellion was the punishment and fine laid on by himself, for an insult offered to himself. The rebellion, therefore, as fixed by Mr. Hastings, appears to be the consequence of that fine, and not the fine the consequence of the rebellion — so that Mr. Hastings went up to Benares under the impulse of malice, to wreak the meanest vengeance for private wrongs, to the manifest injury of the Company's interests, and to the indelible disgrace of the British name: thence sprang the rebellion; and all the calamities and mischiefs attending it, arose from pride, malice, insatiable avarice, and an ambition to follow the example of Sujah Dowlah, and the other detestable tyrants of the east."

Mr. Burke next proceeded to advert to another part of the defence of Mr. Hastings, in which he endeavoured to

justify himself by precedent, in taking bribes, or, as he speciously denominates them, fines; and here, he said, it would have occurred to a man of an enlarged mind and honest heart, to have chosen, when he was searching for precedents, those who were most eminent in antiquity for virtue and talents, and have adopted the examples laid down by the greatest philosophers, writers, and legislators; but instead of that, Mr. Hastings chose the most abandoned and sanguinary tyrants of the east, Cossim Ali Khan and Sujah ul Dowlah. Sujah ul Dowlah, said he, took a *fine*. "Good God! my lords, see how guilt perverts the understanding, blinds the faculties, and extinguishes every power of discrimination in the human mind! Could your lordships have believed, that the governor-general of India, the sagacious, the ingenious Mr. Hastings, should have been so stupid as not to distinguish between a fine of purchase and a fine of penalty?—A fine of purchase, as in the case of Sujah ul Dowlah, and a tyrannical fine of penalty, as in his own?" Upon the whole, he thought the same lines were applicable to the prisoner, which Lord Coke had cited from Virgil upon a former occasion, in which that admirable poet describes the conduct of the judges in hell:

> Gnossius hæc Rhadamanthus habet durissima regna:
> Castigatque, auditque dolos; subigitque fateri
> Quæ quis apud superos, furto lætatus inani,
> Distulit in seram commissa piacula mortem.

If their lordships wished to see the conduct of those judges of hell exemplified, they had only to look for it in the conduct of the prisoner at the bar. But while Mr. Hastings was acting in this oppressive manner, was he in other respects idle? No, by no means; for it would appear that he was busily employed in a plot which cut deeper; was negociating, and had actually received proposals for the sale of the province; and, in aggravation of the guilt of such a transaction, had chosen the very last man almost in existence that he ought to have chosen, to commit the charge of the province to: he chose Sujah ul

Dowlah, who was a bankrupt, and in the last degree of indigence; who owed already more to the Company than he was able to pay; and who, by the necessities of his situation, must have been constrained to a life of rapine. This bankrupt tyrant, stimulated by want, was the man with whom the prisoner entered into a treaty to deliver up Cheyt Sing. To the pillage of this needy tyrant he delivered up a country, which, from its superior beauty and fertility, was called the Garden of God. To him he agreed to give the power to break into the before unpolluted sanctuary of the women, the seat of honour of that unfortunate, injured prince, which the laws of the country and the usage of time immemorial had held sacred even from the execution of those laws or from the entrance of the magistrate. Mr. Hastings never communicated to the rajah, or to any other person, the sum with which he would be satisfied, nor the time at which it should be paid; yet when Cheyt Sing offered him twenty lacks of rupees, he refused it, saying that it came too late. He also affected the utmost resentment against Cheyt Sing for not having offered him fifty instead of twenty lacks, he having determined in his own mind not to accept a less sum than the fifty lacks. But if this was his purpose, why did he not communicate it to the rajah? Instead of doing so, he kept it a profound secret, as if to entrap that unfortunate prince; for it appeared from the evidence produced by Mr. Hastings himself, that not even the resident at Benares knew the sum which was demanded, or even that any sum whatever had been specified.

To point out the various inconsistencies in Mr. Hastings's account of these transactions, were an endless task; but there was one which Mr. Burke said he could not avoid mentioning, namely, that at one time he positively declares that the whole of his proceeding against Cheyt Sing was only *in terrorem*, while at the very same moment he put into execution that which he said was only intended as a threat. Thus it would be found, that no two accounts of the prisoner's agreed with each other, but that one constantly operated as a contradiction to the other.

Mr. Burke then proceeded to shew, in the clearest manner, that so far from the Company having any right or claim to the fort of Bidjegur, they had not even a colourable pretence to it; for the real property in it lay in Cheyt Sing. Mr. Hastings was so conscious of this, that when seeking for pretexts under which to shelter himself upon that occasion, he said he found that some of his predecessors had wished to get possession of it; and sets up the most ludicrous justification that ever was conceived, namely, the wish of his predecessors, as if his oppressive acts could be justified by their illegal intentions.

Mr. Burke next adverted to that part of Mr. Hastings's defence in which he justified his assuming military rank by the subsequent assumption of it by Lord Cornwallis: this, he contended, was an aggravation of the guilt of the prisoner, because it was an attempt to offer a mischief produced by the example of his own act in justification of that very act. But Mr. Burke denied the fact; for Lord Cornwallis had united in him the double offices of commander-in-chief and governor-general, which was so far from being the case with Mr. Hastings, that the parliament of England was obliged to pass an act to confer that united power on Lord Cornwallis. He reprobated the partition of the power of governor-general between Mr. Hastings and Mr. Wheler, as utterly illegal and inconsistent. He insisted that Mr. Hastings's journey to Benares could have originated in nothing but the most foul and unjustifiable motives; for there was no act of advantage to the Company that he could not have done better by remaining in Calcutta; and whether he wished to make or to violate a treaty, or even to overcome any supposed resistance of Cheyt Sing's, he might have done it with much more effect by his agents; and there was no such talisman in the great and mighty person of Mr. Hastings, but that Major Popham, with his army, might as completely have effected the subjugation of Cheyt Sing, as that gentleman with his few companies of seapoys.

Mr. Burke then, in the strongest language, painted the

additional insult offered to Cheyt Sing in his selection of a person as the substitute for that prince. He appointed Hussain Sing, who had dishonoured his family, polluted his father's bed, and was his own inveterate enemy; as if the vindictive spirit of the prisoner, unsated by the enormous injuries he had already offered him, had determined to embitter ruin, to make destruction dishonourable, disgrace more infamous, and affliction more afflictive.

Mr. Burke then shewed, from minutes of the evidence which he read, that so far from Cheyt Sing disclosing any sinister intentions, he had three times put his life into the power of the prisoner, with all the confidence of an unsuspicious heart, till at last his subjects, aware of the danger and treachery that surrounded him, and anxious for the honour of their sovereign, flocked around him, and against his will forced him into resistance.

Having shewn the cruelty of Mr. Hastings's conduct to Cheyt Sing, Mr. Burke proceeded to prove its impolicy with respect to the interests of the Company; for Cheyt Sing, in his flight, carried off with him no less than four hundred thousand pounds, which must have greatly impoverished the province. He left behind him two hundred thousand pounds in his zenana, as in a sanctuary which never had, and, as he vainly supposed, never could be violated. But no sanctuary was sacred in Mr. Hastings's eye; for in his letter to Major Popham, he animated the soldiers to plunder it; and, as if to shew that he was incapable of keeping faith with any one, he directed the Company's advocate at Calcutta, to sue the soldiery for the plunder which they had taken by his direction. "Calculate, then," said Mr. Burke, "the profit and loss of this stupendous account of tyranny — put on one side four hundred thousand pounds carried off by Cheyt Sing — two hundred thousand pounds lavished in plunder among the soldiery — the agriculture, laws, and commerce of a country torn up by the roots — the British nation dishonoured, and all sanctions, human and divine, trampled under foot; and on the other side put — what? The gra-

tification of Mr. Hastings's malice for a private insult said to have been offered to himself. So long as arithmetical numbers stand, so long as truth shall have existence, and justice be the first principle of social union, so long shall the cruelty, avarice, and extortion of Warren Hastings appear manifest to the world!".

Mr. Burke next told their lordships, that they were now to view Mr. Hastings in a new character — that of a legislator. Every thing being swept away by his ruinous hand, the people of the country some butchered and some exiled, the prince and his family outraged; without one plan, the complete conquest made of a country little less, in point of size and revenue, than England and Wales; their lordships were to see how far the prisoner, who having compared himself as a conqueror to Alexander the Great, had imitated the example of that illustrious character as a legislator — in which capacity he would be found acting in defiance of the laws of his country on the one hand, and on the other giving a loose to the most unbridled arbitrary will, and the most harsh and ferocious disposition, and, standing in a middle capacity between the inferior and superior, by his infamous conduct to both, proclaiming himself at once both the rebel and the tyrant. As soon as by those illicit means he had got possession of the country, he proceeded, without any communication with the council, to dispose of the country as if it was actually his own property; confiscated as it suited the needy clamours of his avarice, distributed as it pleased his capricious inclination, and, as he took, gave away without permission, and by a master-stroke of fanatical hypocrisy, founded a Gentoo charity, to pray, not for the country, not for the government of England, not for the Company, but — for the prosperity of Warren Hastings, Esq.!

When he had thus dispatched the property of the country, he thought then of a person to govern under his own arbitrary will, and nominated to succeed the rajah in his office, Durbidgee Sing, a boy of nineteen years of age, who, he himself confesses, had neither right to the office

nor ability to fill it; but to enable him to discharge the duty of it, chooses for his guardian the boy's father, a man of aknowledged incapacity. To ensure to himself the dominion over those nominal governors, he appointed as resident Mr. Markham, a gentleman possessed of the very strong recommendatory qualifications of twenty-one years of age, and five months of experience. When he mentioned this gentleman's name in that manner, he wished their lordships to understand, that not to him, but to Mr. Hastings who appointed him, were justly to be attributed the misfortunes that ensued to that country and the Company from his incapacity; for when any man was burthened beyond his strength, he was no longer answerable for his exertions. For this gentleman's services, however, and to support his dignity, Mr. Hastings allowed the most extravagant emoluments, not less than sixty thousand a-year authorized allowance, besides what their lordships' knowledge of the system of peculation in that country might suppose him to have picked up.

In this, as in every other transaction of Mr. Hastings, corruption reared its head, and stared them in the face. From this Durbidgee Sing, Mr. Markham, by which he would be understood to mean Mr. Hastings, exacted a net revenue of four hundred thousand a-year, although it appeared, from the evidence of Mr. Markham himself, that he, in privy council, with his sage moonshee, and his sage clerk, having made up the revenue at the utmost they could bring it to, it was only three hundred and sixty thousand pounds; a circumstance which could not fail to engage the attention of their lordships — that an inexperienced youth of twenty-one, a hireling moonshee, and a venal clerk, should sit as *quorum* to decide upon the revenues of a great country. Mr. Duncan, too, whose character stood with honour on their lordships' records, has declared, that the whole revenues of the country, take them how they would, could not be made to exceed three hundred and forty thousand pounds; in addition to which, if their lordships would look back into the revenues of any number of years,

in the most prosperous times, the country was never known to produce any thing near four hundred thousand pounds. As a proof that Mr. Hastings was conscious of the enormity of this exaction, he agreed to give for the future a remission to the rajah, but granted that remission only on the terms that the full sum should be paid up to the time at which it was granted, and thus by one act acknowledged the enormity of the exaction, and enforced the execution of it; and not one of these circumstances did he lay before the council.

Mr. Burke said it was a principle, the universal promulgation of which might be of service to mankind, that that man whom his unlucky fate condemns to the exercise of arbirary power, is as certainly condemned to perpetual ignorance and blindness. The slaves who share his favour will not set him right, and the honest men who do not, dare not. Thus it happened with Mr. Hastings — his rapid descent in wickedness deprived him of his intellects and sight, while none were so hardy as to dare to impede his progress. Under this blindness and fatuity he entirely destroyed the country; so that while he exacted the heaviest revenue from it that ever was known, he rendered it utterly unproductive, even of support for its inhabitants; and considering it as his own private property, received complaints against Durbidgee Sing as against a private steward, and proceeded in a more summary way against the one than he could against the other, and never communicated to the council a single tittle either of the complaints or of the consequent proceedings, *till the ruin* of that unhappy man was effected, although he had full five months during which to make such communication. He then called upon the board to confirm all the violent acts of himself and Mr. Markham; said he was personally hurt at the discredit done to his appointment; and desired them to concur in the punishment of the rajah, when in strict justice it was himself who merited the punishment. At the same time he denounced, that if every rupee of the exac-

tion was not paid, the life of Durbidgee Sing should answer for it.

Mr. Hastings having thus annihilated all law, and the people having no fixed point to which to resort for protection, had nothing left but prayer and petition: this they had recourse to — many petitions were sent in against Mr. Markham; but Mr. Hastings received the petitions of Mr. Markham against them, and suppressed those petitions which were sent against that gentleman. Under colour of the rigorous exaction of Mr. Markham of that enormous revenue, the collection of which, if it could have been collected at all, was prevented by his interference, Durbidgee Sing was plunged into the dungeon of Chunar, selected for its horrors, and his life was threatened if he did not pay; but there being no proof of his having collected, but, on the contrary, strong proofs that it could not be collected at all, and that he was persecuted for that which the prisoner knew had no existence, application was made to Mr. Hastings for his release; but the tyrant proceeded to Europe without releasing him, and he died in jail after his departure from India.

After his death, upon an examination of his affairs, and a search of his house, it appeared that the unhappy man died a bankrupt. "In the name of this unhappy victim," said Mr. Burke, "who was condemned and suffered without being heard, and in the name of his afflicted family, who were left to deplore his untimely death, I conjure your lordships to do severe justice upon the criminal at your bar. Thus was a second rajah of Benares cut off. From that period the revenues of the country were managed entirely by Mr. Markham, under the ostensible name of a native collector, till Mr. Hastings returned to Europe, and the reign of his viceroy ended."

Mr. Burke said, that in order to supersede all necessity of observation, he would read from Mr. Hastings's own details what would be sufficient to condemn him. He then read to the following effect: That in April 1784 the prisoner said, that in passing through Benares he was fol-

lowed by the clamours of the disconsolate inhabitants; that from Buxar to the opposite boundaries of the country, the whole was nearly depopulated, and nothing appeared but ruin and devastation. This was the description he gave of that very country in 1784, which but a short time before he himself had described as a place that humanity must shed tears of joy to see, thick set with villages teeming with the productions of nature and agriculture, and so cultivated that the soldiers were obliged to march in file to avoid destroying the fruits of the earth, which had they walked in rank they must have done.

In confirmation of this fact, Mr. Burke directed their lordships' attention to a transaction which had since taken place: Lord Cornwallis had sent up Mr. Jonathan Duncan to see the country; and, to shew how deep the wounds of arbitrary power are, and how slowly, if ever, they recover, Mr. Duncan reported, that not a third of some districts were in a state of cultivation, and that in the rest it was one continued waste as far as the eye could reach; and that, upon inquiry, he found the whole was owing to the mismanagement of former governors, and that the date of the ruin was to be fixed from the expulsion of Cheyt Sing. "Oh!" said Mr. Burke, "what triumph for a British governor, who on the balmy wings of peace and beneficence, should carry mercy, blessing, and gladness in his train, to be pursued by the clamours and execrations of an injured people, or to create a solitude around him wherever he went; the unhappy victims flying from him as from a pestilence; giving up their all, their industry, and their homes, and facing famine and exile, rather than the tyrant who had overspread their country with ruin!"

Mr. Burke said, that on the last day [June 3.] he had been obliged to conclude where the prosperity and the patience concluded too; where a great country was laid waste, its agriculture and commerce destroyed, and its lawful sovereign deposed and banished. Their lordships were now to proceed from that desolated country to another,

and to travel from desolation to desolation, because they were to walk in the steps of Warren Hastings. But before their lordships proceeded to the consideration of what he had to offer, he would call to their recollection one grand principle, namely, that a man was not innoxious merely because he was insignificant; for manifold experience had shewn, that men bred in the most mean and wicked habits, when placed in unsuitable power, do more mischief than the worst tyrants born under canopies of state and swaddled in cloth of purple. The prisoner at the bar amply verified this remark; for if the great tyrants of the east, to whom the counsel had thought proper to oppose his character, had raised a pyramid of ninety thousand heads by the splendid havock of the sword, the prisoner had raised his pyramid by the meaner and more inevitably destructive havoc of famine.

Having endeavoured to impress this principle upon their lordships' recollection, his next duty was to lead their attention to the conduct of the prisoner in the province of Oude, a country hardly inferior in size to England; which conduct the counsel of the prisoner had endeavoured to palliate by the most gross and unfounded slanders upon the pedigree of the reigning prince of that country, and taking for their authority that contemptible production, "Dow's History of Hindostan," which few read, but almost all who read despised, had endeavoured to throw a slur upon that great family, by saying that he was the son of a pedlar.

Sujah Dowlah, he said, it would appear from Mr. Verelst's account of India, was, though haughty and ferocious in his nature, at once magnificent in his expences and economical in his state affairs. He made an annual saving from his revenues without straining them, and of course had the confidence of his people, though a tyrant. But the prisoner had treated his offspring with indignity below servility, and raked up the ashes of the dead to vilify that prince, though he was not ashamed to take and put in his pocket immense sums of his money. But whether the account given to their lordships of that family by the

Dows, the Hastings's, and that infamous clan of slanderers, was true or not, could have no weight in their lordships' determination; for Mr. Hastings, at all events, found him a sovereign exercising authority by the consent of his people, with a revenue equal to that of England, an army of 120,000 men, and a splendid court, and had no right to go back into his pedigree, in order to find defects to cover his own enormities.

In 1775 Sujah ul Dowlah died, leaving one lawful child, Asoph ul Dowlah, and eighty by his concubines, all of whom, by the customs of the Mahomedan courts, had rights and privileges peculiar to themselves, and even pretensions to the succession. With this prince a treaty had been made, which however gave no power of interference with the interior of the country; but Mr. Hastings set up as his defence, that by this treaty the nabob was reduced to an actual state of vassalage; and while he admitted on the one hand the flourishing state of Oude at the time of this treaty, on the other he avows its total ruin during his administration; but he says it was occasioned by a bad system of government established there. Before he would remark upon this transaction, he would lay it down as a principle, that mere systems never rendered a people happy or unhappy, but as they gave wicked men room to act. Had the system however been never so pernicious, was it not the duty of Mr. Hastings to correct it by his administration? But by saying that he acted in conformity thereto, he avowed himself the instrument of that villainous system; and it appeared by Mr. Hastings's evidence, (which Mr. Burke read,) that by good faith there was not a nation in India but might have been won over to England, and yet that in fact they all abhorred the connection. This disgrace upon the British name, and this abhorrence of its servants, took rise only in the administration of Mr. Hastings, who threw the whole country into a masquerade, who invested slaves with authority, and turned governors into slaves.

Mr. Burke then adverted to that part of the prisoner's

defence, in which he stated that the reason why he did not oppose that corrupt system in the constitution of Oude, was, that there was a majority in council against him; and to strengthen his defence, had thrown aspersions on the character of General Clavering, Colonel Monson, and Mr. Francis, men whom, contemplating their conduct in India, he must respect, whether living or dead, and whose fate, when compared with that of this prisoner, served to remind him of an observation by no means new, that let a man be ever so corrupt and wealthy, he has hosts of friends; but let him stem the torrent of corruption, and a thousand mouths are opened against him. But Mr. Burke insisted, that whether Mr. Hastings had a majority in the council or not, he was bound to propose measures to counteract that system; and even though he knew his propositions would be negatived, at least to record his disapprobation of it. But taking the prisoner's objection to those gentlemen, (viz. Clavering, Monson, and Francis,) and supposing them to have been as wicked as he said, their power lasted but for a very short time, after which he was left in full power over the councils of the country, and in full possession of the government of Oude. Being thus invested with unlimited power, and finding the nabob, as he would represent him, a vassal to the Company, he determined to make him a vassal to himself, and to that end annihilated the whole Persian correspondence of Oude, (which, their lordships knew, must comprize the whole correspondence, as the Persian is the only language in which the business of all eastern courts is transacted,) secreted and kept it in a private cabinet, and never communicated it to the council from 1781 to 1785. But as nothing spoke so strongly against a man as his own evidence, so nothing could establish a fact so strongly as a record; and in order to confirm his assertion relative to the suppression of the correspondence, Mr. Burke said, he would read from the Company's records, a statement of the fact as it really stood. Here Mr. Burke read from the minutes of council a statement of the Persian translator, that for four years he found no Persian

document whatsoever, till after the departure of Mr. Hastings, when he found some in a mutilated state in the trunk of Captain John Scott.

Thus, when the council, emancipated from the tyranny of Mr. Hastings, dared to think for themselves, and to call for the records, out they came from the Pandora's box, that abyss of secrets, Captain John Scott's trunk, mutilated and garbled; and thus the redoubtable governor of India, with the assistance of that miraculous cabinet, that Aladin's wonderful lamp, kept the government of Oude in his hands, made a tool of the nabob, blinded the council, and destroyed not only that country, but the interests of Great Britain. This, Mr. Burke insisted, was a positive act of rebellion against the laws of his country, while the concealment of the records was not only a substantial crime in itself, but a positive proof of other crimes.

Having thus rendered the council and the nabob subservient to his purposes, he determined to proceed further; and to follow his system of rebellion, denied the right of the Company to the appointment of their own officers; and, in defiance of a positive order of the court of directors, appointing Mr. Bristow resident at Lucknow, he recalled that gentleman from that office, and sent in his place Middleton and Johnson, two instruments of his own; and, not content with this positive disobedience, boasted of it, and said, that he resisted Bristow only because the court of directors appointed him; and as he promulgated that declaration to the nabob, and to all the powers of that country, had certainly so far done all he could to expose the nakedness and imbecility of the parliament of Great Britain, and the Company which acted under its authority. Mr. Burke here read a letter to that effect from the defendant to the nabob of Oude. But afterwards, when it suited his own purpose, and when the Company had ceased to recommend Mr. Bristow, he appointed that gentleman himself.

Mr. Burke read private letters from Govind Ram to the vizier, and from the vizier to Govind Ram, for the pur-

pose of developing the various machinations of Mr. Hastings in Oude with the view of thwarting the intentions of the court of directors, and at the same time to screen his conduct from their knowledge. It appeared that the letter containing a requisition from the nabob was first written by Mr. Hastings, and sent up to the nabob, in order to be written again, and sent as his own. To such a length was this carried by Mr. Hastings, and there appeared such manifest contradictions between his public declarations and his private instructions, that the vizier, by the nabob's order, wrote to the prisoner, and begged him to state really what were his intentions, for among such innumerable inconsistencies, he could not discover them. "Here," said Mr. Burke, "here, my lords, is a discovery of a new and extraordinary kind — here, my lords, the crooked machinery of this great and important nature, in which the manager, I mean Mr. Hastings, had so long dazzled the eyes of the world with the splendour of his pantomimical deceptions — here the flying of witches, the sinking of ghosts, the trap-doors, and the harlequinades — here all the strutting of the signors and the sweet blandishments of the signoras, and the great master of the machinery himself, were all, all opened and exposed to view in that cabinet of slight of hand and hocus pocus, the trunk of Captain John Scott, that miraculous trunk which produced all the effects of Aladin's wonderful lamp!"

The nabob, at last reduced to the utmost extremity, applied to the prisoner to be relieved from that band of British officers by whom he was surrounded and oppressed; among those was to be found a name ever memorable in India, Colonel Hannay, who had been recommended to Mr. Hastings by Sir Elijah Impey, and turned out a worthy fruit of such a stock. This man had the command of two regiments of the Company's troops in the province of Oude, exercised also the office of a farmer-general of the revenue, and was enabled by the power he possessed, of commander-in-chief, to enforce his exactions as farmer-general; and in instances where the unfortunate inhabi-

tants refused payment, he confined them in the open air in cages, and exercised on them the most unheard-of severities. To such a degree were they at last reduced, that they were obliged to sell their children in order to pay his arbitrary exactions. The evidence upon this subject, Mr. Burke said, demanded their lordships' most positive credence, when they recollected that it was extracted from the witnesses like drops of blood, and was proved by the prisoner's own evidence. This produced a general rebellion; the forts and all the dungeons were filled with prisoners; the people rose at the call of nature, and each, as he stood affected, demanded his parent, his brother, or his child; and, as an earnest of the clemency they were to expect, Colonel Hannay cut off the heads of eighteen of the principal inhabitants, and threw them over the battlements; and for this transaction no account, no responsibility was to be found but the will of that gloomy murderer.

At length the nabob, roused from the state of debasement into which the tyranny of Mr. Hastings had sunk his mind, demanded the recal of Colonel Hannay, which was, with much difficulty, complied with. Here Mr. Burke read a letter from the vizier, expressive of the utmost humility, in which he swears, by the Holy Prophet, that was Hannay to come again into Oude, he would fly the country.

Mr. Burke said, that on the last day (June 5.) he had proved that Mr. Hastings had been guilty of premeditated rebellion against the acts of the parliament of Great Britain, and against the acts of his masters, the court of directors. He had also proved his vengeance against those officers of the Company who refused obedience to him, and only rested their rights upon the Company. He had proved the absolute vassalage of the nabob to the prisoner, and his being made by him the weak instrument of his own ruin, and of the ruin of his august family; he was now, he said, to call the attention of their lordships to the treatment of their prince, in which cruelty and upstart tyranny were carried to a refinement unexampled in the ingenuity of

man. The prisoner, not satisfied with the injuries he had heaped upon the unhappy prince, brought him, who had no will of his own, down to Chunar, under pretence of settling all misunderstandings, and reconciling the British interest with that of the nabob: accordingly, the nabob came down.

Mr. Hastings having brought this miserable victim down to Chunar, prevailed upon him to sign a certain treaty, under the pretence that the stipulations which immediately affected the interest of the nabob were not to be executed, but were to be in lieu, as it were, of those conditions which were favourable to the nabob. The first article of the treaty was, that Mr. Hastings was to order away the rabble of British pensioners and officers, particularly the new brigade, who all together constituted a weight that nearly sunk the nabob, and exhausted his revenues; while on the other hand, the nabob undertook to resume those jaghires which had been granted by former nabobs, either to the royal family for support, or to their subjects for services, and which were considered as fixed and permanent property: these were to be resumed, and made a new source of peculation for Mr. Hastings. In order to shew that the prisoner, from the beginning, had no intention of performing either part of this treaty, Mr. Burke read a letter of Mr. Middleton, in which he says, that the nabob was ready to conform to whatever Mr. Hastings might prescribe, and that he (Middleton) was ready to take his share of the odium of the prisoner's non-performance of that agreement. But what shewed that the defendant was utterly regardless of the appearance even of decency, on the very day on which the treaty was signed, he recommended new pensioners to the nabob.

Their lordships were then to observe how far Mr. Hastings adhered to his private promise to the nabob, on the strength of which that prince had been induced to sign the treaty of Chunar. Mr. Hastings had come down from Benares, frustrated in his intention to get 500,000*l.*, which he had promised himself by his journey there: but seeing the

country ravaged, and nothing but disgrace and solitude about him, and afraid, after the ruin he had made, to return without some plunder, he revolved in his mind a vast variety of stratagems, and at length hit upon this happy expedient of plundering the principal people of Oude of their property, under the name of a resumption of the jaghires. But aware that the nabob, from common justice, as well as from the natural feelings of a man to his own family, must feel a repugnance to carry such a plan into execution, he perfidiously promised him that those stipulations should not be enforced, which promise he nevertheless broke as soon as the treaty was signed, by wresting the jaghires from their lawful owners. Mr. Burke defined the nature of that species of property called Jaghires, and assimilated them to the feudal possessions in Europe; and said, that jacobinism never struck a more effectual blow against property than their lordships would do, if, by approving of this measure, they sanctioned the idea of arbitrary confiscations, for the purpose of creating revenue. For his part, viewing it in the light of justice to the individual, or policy in the state, his prayer respecting property should ever be, *esto perpetua.*

Mr. Burke then proceeded to shew, that when this part of the treaty came to be carried into execution, the nabob shewed the most acute repentance for having been trepanned into signing the treaty. He not only expressed reluctance, but absolutely fell at the feet of Middleton, conjuring and entreating him to spare him the horror of turning all the different branches of his family, who had been provided for by those jaghires, destitute upon the world; and finding all his efforts to melt the obdurate heart of Middleton ineffectual, and fearing that a rebellion would be the consequence of the indignation of his people at such treatment, he sent his family away, and petitioned Mr. Hastings to relax from his unjust resolution; but in vain — in vain he begged, prayed, dissembled, and put in practice every delay — the inexorable Middleton usurped openly the government of the nabob, and with all the harsh hauteur

of a tyrannous conqueror, declared that he would issue purwannas to compel the execution of the treaty. Here Mr. Burke said, that he would read Hastings's and Middleton's own account of the business, and then leave it to their lordships, whether the highest pitch of crimination they had ever witnessed could equal such a nefarious avowal as those letters contained. Here he read Mr. Middleton's letter of December 1781, page 809. in the minutes, in which he states that the nabob's finances were so bad, that he was not able to pay his troops; that the resumption of the jaghires was obviously against his inclination, for that a settled melancholy had taken possession of him, so as to endanger his health, and that therefore he (Middleton) suspended the execution until he knew Mr. Hastings's pleasure.

Here, said Mr. Burke, your lordships may perceive the conflict between the natural feelings of humanity and the abject habits of a slave; but Mr. Hastings stood superior to such feelings, and sent a body of troops to enforce the immediate execution of this treaty. It must be a considerable aggravation of an injury, to receive it from a set of obscure people, coming, like the English, from an unknown country — it was a bitter, bitter draught to any having the feelings of men. Oppression, he said, was good no where, but certainly was more tolerable from those to whom the oppressed were accustomed to bow. Letters of Mr. Middleton of the 6th and 7th of December 1781, were then read, by which it appeared that Middleton had ordered the necessary purwannas, but before they could be issued, received a message from the nabob, requesting the delay only of a few hours, and that the thing should be done in his own name; but this Mr. Middleton refused, and issued the purwannas himself.

"Here," exclaimed Mr. Burke, with strong marks of emotion, "was an act of tyranny and usurpation unexampled in history! Have your lordships ever found in the annals of tyranny, or the histories of popular tumult in deposing princes, any act to equal this? a monarch deposed

by his pretended allies, trampled under foot by the slaves who before abjectly crouched at his feet, and the means of whose existence were drawn from his bounty, and himself rendered, by one flagitious stroke, the greatest slave and the poorest man in his own dominions! All men possessed of the principles of common honesty must be roused to indignation at such a recital, but your lordships, more sublimed to honour, must run before me in my feelings on this transaction."

The confiscation thus executed, the whole was handed over to Middleton, who again, on his part, handed it over to the usurers of Benares, and thus a body of foreign usurers were put into possession of the estates of the principal people of the country. Middleton said, that the debt would be paid by these means in the space of two years; but would it would it not be better, Mr. Burke asked, to suffer the estates to remain with their real owners, and compel them to give security to the bankers of Benares? But, no! Mr. Hastings willed it, and the unfortunate people were to be turned out without the means of existence:

Sic volo, sic jubeo, stat pro ratione voluntas.

In order to sum up every thing that could be said of the atrocity of this act, Mr. Burke proceeded to shew their lordships the horror with which it struck every body save Mr. Hastings. Middleton himself, "albeit not used to the melting mood," relented, and wrote in terms of commiseration for the unhappy people to Mr. Hastings; who, however, felt himself superior to such vulgar feelings — "honest black disdained to change its colour." He, with all the stern rigidity of a stoic, spurned from him pity in such a virtuous cause: this Cato of peculation, fraud, and tyranny, would not relent, but insisted upon the rigorous execution, even to the letter of the confiscation; and if Middleton had not nerves to execute it, he himself would have gone in person for that purpose; and thus, said Mr. Burke, the prisoner argued, — "I am afraid to go home without money; I went to rob in Be-

nares, and failed there; I must get money elsewhere, or I cannot meet the parliament of England. Are you equal to it? says the great robber to the little one. If not, I, the great master of tyranny, will fly on the baleful wings of ruin, and put to shame the poor relenting nature of your heart."

> —— Infirm of purpose!
> Give me the daggers. ———
> My hands are of your colour, but I shame
> To wear a heart so white.

This great man could not, like Satan, see the glories of the world; but worse, looked over the naked waste that himself had made, and could not see one single shilling that he could by fraud or violence attach; all was hid, and buried under ground, when he got there. He then recollected one great family, the women of which had, in three or four successive reigns, amassed, by saving it from their incomes, a large sum of money, and had it secured under the guard of a fortress, and a treble security of the manners and laws of the country; — but these were but slender impediments to the violent passion of the prisoner, for as Jupiter made love in a shower of gold, so he made love for a golden shower, not in gold at the person, but at the person for the gold.

Having first resolved to seize on those treasures, he was at a loss under what pretext to justify such a violation, not only of the right of the parties, the laws of the country, the decency to be observed to persons of the female sex by the customs of the country, but of a treaty by which the British government had guaranteed that property to them. At length he hit upon an expedient more atrocious even than the original intention; and, partly by stratagem and partly by force, made the nabob enter into his plan, and become the instrument of violation of his mother's property, house, and family. This was no other than to accuse them of rebellion, and under that pretext to confiscate their goods. And here it was worthy of remark, that Sir Elijah Impey (who by his sacred office was bound to protect, yet was

made the instrument of this act of injustice) never was consulted upon the point of law by Mr. Hastings, although he was continually with him, for —

"Phœbe went with him wherever he went."

No, Sir Elijah did very well for a common messenger, for a tipstaff, or to take an affidavit; but, upon a point of law, was not fit to be consulted, though chief justice of India: neither had Mr. Hastings thought proper to consult the native chief justice — he consulted neither, but employed both in the execution of this abominable project, contenting himself with putting the question hypothetically — "Supposing the Begums are guilty of rebellion, has not the nabob a right to confiscate their property?" To which Sir Elijah said, Certainly; and thus, between them, they contrived to conform to the old legal maxim — *Ad quæstionem facti non respondent judices, ad quæstionem legis non respondent juratores.* Mr. Hastings assumes the province, and exercises the right of the jury, and finds the fact, and Sir Elijah, in his character of judge, applies the law, and thus between them was this infamous transaction completed.

Mr. Burke said, that the honourable manager who had preceded him upon this charge had gone so very fully into the subject, that it was hardly necessary for him to say more, than that, to accomplish Mr. Hastings's purposes, a variety of the meanest stratagems, most violent outrages, and enormous cruelties were practised upon these unfortunate women, until at last he discovered where their hoards lay, upon which occasion Mr. Middleton, with all the raptures of a lover, in amorous transports and cooings, writes to his "*dear* Sir Elijah Impey," that he has got at the object of all his wishes, the secret hoards of the old ladies.

But even the acquisition of those immense treasures could neither satiate the avarice, nor give a momentary check to the cruel disposition of the prisoner, for he had an assay made of the treasure, and finding that it fell short

by sixty thousand pounds of the sum upon which he had fixed his mind, he extorted from the eunuchs, who were the ministers of the Begums, bonds to the amount of that deficiency. The moment the bonds were obtained, those unhappy victims were dragged to a prison, and a prison of all others the most dreadful to them, the English fortress of Chunar. In the dungeons of that fort they were kept, and treated not only with rigour, but with the most atrocious cruelty, laden with heavy chains, and repeatedly deprived even of food. Mr. Burke read some letters from Major Gilpin, who had the command of the fort, to Middleton, in which he states the miserable situation of his prisoners, and requests permission to alleviate in some degree their torments; but Mr. Middleton, instead of affording relief, gave directions for heavier fetters, and, if possible, an increase of torments. The princesses of Oude, feeling for the situation of their ministers, parted with all their ornaments and dress for the purpose of relieving them out of prison; by these means they raised a sum of 40,000*l.*, but still they were detained for the remainder.

Mr. Burke then proceeded to shew the gross improbability of the charge of rebellion which had been made against the Begums, and said, that if it were even probable, the evidence which the prisoner had brought to prove it would shew its falsehood. But allowing for a moment the truth of this accusation, what did it prove? Why, that the tyranny of the English was so intolerable, that even cloistered old women conspired to cut off a man, who stood in the relation of son to the one, and grandson to the other, rather than not get rid of the British oppression. Mr. Burke, proceeded in recapitulating the material points of his speech on the preceding day; the result of the whole was said to be, that the dominions of the nabob of Oude were utterly ruined by Mr. Hastings.

On the following day, June 11., being the one hundred and forty-fifth day, Mr. Burke recapitulated what he had said on the preceding day, and then went into a very strong

and pointed attack upon the testimony and conduct of Sir Elijah Impey, a member of the House of Commons, and upon the several gentlemen who had been employed in Oude. He went through the Begum charge in part; contended that it was impossible she should have been in the rebellion in the year 1781; that the whole was a story invented by Mr. Hastings as a plea for seizing her treasures; and offered as a proof of it, that the directors had sent the most positive orders for instituting a particular inquiry into the truth of the accusation against the Begum; which orders the colleagues of Mr. Hastings would have carried into execution, had they not been over-ruled by Mr. Hastings. This subject occupied Mr. Burke for a considerable time; and in the course of this speech he applied so many strong epithets to Mr. Hastings, that at length the latter started up, and declared that the directors had sent no orders for instituting the inquiry mentioned by Mr. Burke, and that human nature must at last be exhausted by hearing such gross falsehoods so often repeated. Mr. Burke appeared a little confounded; but recovering himself, said, he hoped the Court would not permit that wicked wretch, that scourge of India, that criminal, to insult the House of Commons. After some time, Mr. Windham said the best way would be to read again the orders of the directors for the inquiry alluded to by Mr. Burke. The letter was read, and it appeared there were no orders; the term was a request.

On Thursday, June 12., being the one hundred and forty-sixth day, Mr. Burke took up the remaining part of the Begum charge, namely, the treatment of the women and children of the late Nabob Sujah ul Dowlah, and the seizure of the treasures of the Begum, the imprisonment of her ministers, and loading them with irons, to give securities for large sums, and pay the same, stripping the effects, clothes, jewels, &c. from the Begum, by which means the numerous family in the Khord Mahal (inner palace) which was dependent upon the Begum, wanted the

mere necessaries of life; and after fruitless supplications and shrieks of famine, they endeavoured to force their way out of the palace, and break into the market-place to beg for bread, but were driven back with blows by the sepoys, who were armed with bludgeons. Several letters were read, written by Major Gilpin, Mr. Bristow, and Mr. Middleton, in order to fix the guilt of these transactions upon the defendant. Mr. Burke concluded this charge with an affecting appeal to the feelings and the passions of their lordships.

The principal occurrence of the day was an attempt to comment upon charges, as collateral matter, which had been abandoned by the House of Commons in a vote on the 4th of February 1791. The lord chancellor checked this informal procedure, and signified his opinion, that what was not insisted upon in charge, could admit of no comment in reply. Mr. Burke retorted this extraneous adduction upon the counsel, who had, he contended, also brought matter irrelevant in their defence. But he desired to withdraw a few minutes with his brother managers. Mr. Windham attended him out, and Mr. Francis followed. When they returned, Mr. Burke lamented very feelingly the hardship of his situation; but he said he was bound to believe he heard the judgment of that House, when no one peer arose to dissent from his lordship, to whose single opinion, indeed, great weight was always attached, and to which he very cheerfully deferred. However, the facts he alluded to were upon the Journals; they were in the managers' record, and in that of the counsel; and though abandoned in charge, yet, as assented to by Mr. Hastings, would remain for ever evidence against him. Mr. Windham then read a variety of papers, and Mr. Burke commented at considerable length. The business of Oude was closed by Mr. Burke's declaration, that he believed that province to be as much now as heretofore governed by Mr. Hastings.

Mr. Burke then proceeded nearer home, and having historically painted the three classes of inhabitants at Bengal, he considered what measures Mr. Hastings had taken

to augment the wealth, secure the territories, and moderate the government of the Mahomedans, the landholders, and the Company's servants. Mr. Burke, after a few more observations on Oude, said he had some new matter to offer to their lordships on the next day they would honour him with an hearing.

Saturday, June 14., being the one hundred and forty-seventh day, Mr. Burke began this day's summing up with the latter part of the sixth article of impeachment, and the whole of the seventh, which relate entirely to the peculations, frauds, and embezzlements charged to have been committed by the defendant in the extensive provinces of Bengal, Bahar, and Orixa. He said, that Mr. Hastings had despoiled the nabob of Bengal, like an ancient knight, of all his armour — his helmet — his hawbeck — and at last cut off his spurs — that he afterwards restored him to all his privileges, for the purpose of again bringing into power that infamous, corrupting, and corrupted prostitute Munny Begum; that he made her chief justice, and the country was again given up to murderers and robbers — that he set up the country gentlemen to auction, and put his own domestics in possession of the estates of the nobles of the country.

Having dwelt for a considerable time on these points, he passed to the seventh article, respecting the collection of the revenues of the above provinces, which were granted to the Company in 1765, by Shaw Alum, the Great Mogul; in animadverting on which, Mr. Burke alternately soared into the heights of sublimity, and frequently sunk much below mediocrity. A proof of the latter was the comparison of Mr. Hastings with the keeper of a pig-stye wallowing in filth and corruption. Speaking of Mr. Hastings's promise on his appointment to extirpate the system of corruption in India, he said, on the contrary he had opened its flood-gates more widely, and in such a manner as to preclude all possibility of a reform:

——— "Like Sin and Death,
Who op'd the gates of Hell, the which to shut
Excell'd their power!"

Of Mr. Hastings's disobedience to the Company's orders, Mr. Burke said, it rose with an elastic spring in proportion to the pressure upon it. His principal object this day was to criminate Mr. Hastings on account of the appointment of the Begums, and the conduct of Sir John D'Oyley. He stated that Sir John D'Oyley had sent no accounts to Calcutta of the expences of the nabob, and that he had refused to answer questions in the committee of secrecy, because the answers might tend to criminate himself. He charged the governor-general with having set up the public appointments to sale. He made some very sarcastic similes as to the connection between Mr. Hastings and the Begums, quoting Dean Swift's Progress of Love as applicable on the occasion. The humour touching the Munny Begum flowed something in this way: "Age has its comforts — the consolations of debility and ugliness may be found in brandy. The old lady had therein a monopoly: She was a great dealer in the article. But mark the transition — a youth of sentiment and love; an old age reposing upon the brandy-cask." He then ironically adverted to the perverse passions of great men for strumpets. "Antony had his Cleopatra, and Mr. Hastings his Munny Begum. It might be so; for aged, shrivelled, bony deformity had its relish for some palates: but, good God! no man ever fell in love with his own banyan!"

Mr. Burke exerted all his severity upon the shameful practice of sending out youth to repair the honours of shattered nobility here, by the plunder of the East. To the general remark, that we should hate the crime but love the criminal, he replied, "it was a false and pernicious maxim. Some vices were their own punishment; the evils of ambition but few could imitate; but those of peculation were open to the million. O, but we should punish the crime and pity the criminal! What, am I to love Ne[illegible]

Is Caligula to have my cordial esteem? Am I to take Domitian to my bosom? No; I hate both the criminal and the crime, and it is virtue to do so."

Mr. Burke next went very slightly through the contracts; the abolition of the provincial councils and Gunga Govind Sing — he then went back to Oude, and came back again to Bengal, to what he called the bribe of the entertainment — that is, the sum of two thousand rupees a day, paid to Mr. Hastings while he was at Moorshedebad in 1772. Mr. Burke then said, that if the lords would attend him one hour on Monday, he would finally close; upon which the court adjourned to

Monday, June 16. being the one hundred and forty-eighth day. Mr. Burke began by an illusion to a speech of one of the counsel, whom he accused of taking improper liberties, and he then mentioned an epigram, of which the same gentleman was the supposed author. As it is in proof, that the sum of two thousand rupees a day received by Mr. Hastings in 1772 was for entertainment, agreeably to established custom, and not a bribe, as charged by the late House for an appointment to office, Mr. Burke took up a new ground. He affirmed that the covenants were made precisely to prevent this sort of abuse. Mr. Burke then returned to Nobkissen's present, which he affirmed to be worse than any act of Verres, and applied the epithets rogue, common cheat, swindler, to Mr. Hastings, for having taken that present for the Company.

Mr. Burke next came to Lord Cornwallis's evidence, which he insisted proved Bengal to be ruined. He then read the 39th section of the act of the 24th of his present majesty, to prove the oppressions of Mr. Hastings. The act of parliament, he said, had declared the oppressions and the oppressor; and addressing himself to the lords, he said, "You must repeal this act of parliament, you must declare the legislature a liar, before you can acquit Warren Hastings."

Mr. Burke then said, that Mr. Hastings had pleaded

his merits, which was no answer to a criminal charge, but in fact, every act which he stated to be meritorious, had been condemned by a former parliament; Mr. Dundas having moved forty-five resolutions, each of which condemned some act done by Mr. Hastings. Every one of those acts, said Mr. Burke, not excepting one of them, were all censured by the House of Commons. Mr. Hastings admitted this statement to be true, and told the House of Commons he did so; at the same time that he complained of the cruel injuries he suffered by that body having censured and prosecuted him in one character, for acts which in another they had very fully approved, and of which they continued to enjoy all the benefit. Mr. Burke next affirmed, that Mr. Hastings was the author of the Mahratta war, and that he concluded it by a dishonourable peace.

After dwelling with considerable energy for a long time on the charges in the gross and in detached parts, he, at last, said he was come to his conclusion; but before he quitted the box, he should beseech their lordships' attention for a few moments. Mr. Burke then made a solemn pause, and gave his peroration, the beauty, energy, and simplicity of which was never exceeded, if indeed equalled. We can only give a faint idea. "My lords," said he, "the Commons wait the issue of this cause with trembling solicitude. Twenty-two years have they been employed in it, seven of which have passed in this trial. They behold the dearest interests of their country deeply involved in it — they feel that the very existence of this constitution depends upon it. Your lordships' justice stands pre-eminent in the world, but it stands amidst a vast heap of ruins, which surrounds it in every corner of Europe. If you slacken justice, and thereby weaken the bands of society, the well-tempered authority of this court, which I trust in God will continue to the end of time, must receive a fatal wound, that no balm can cure, no time can restore."

Here Mr. Burke entered into a comparison between the dignity and justice of the high court and the late parliament of Paris, the death-blow to which was given by Mirabeau.

He next alluded to the miserable state of France at the present moment — to the murder of the best of kings and the most glorious of queens, and to the destruction of the parliament of Paris, a court almost as dignified as that which he was then addressing, and uniformly pure in its legal decisions; and, after praying that Heaven would avert from us the miseries that had desolated France, he said, that if it should be their lordships' lot to submit to the axe of the guillotine, on any future and dreadful convulsion, their last hours would be more tranquil from a reflection, that in the great cause before them they had decided by the rules of equity and justice. But, deprecating such a dreadful event, he hoped the noble fabric of this constitution would long stand unimpaired in reputation as well as in strength; and at the same time that it operated as a terror to tyrants, that it would always afford protection to injured and oppressed nations.

Mr. Burke then concluded his elaborate speech. "My lords," said he, "it is not the criminality of the prisoner — it is not the claims of the Commons to demand judgment to be passed upon him — it is not the honour and dignity of this court, and the welfare of millions of the human race, that alone call upon you: —when the devouring flames shall have destroyed this perishable globe, and it sinks into the abyss of nature, from whence it was commanded into existence by the Great Author of it — then, my lords, when all nature, kings and judges themselves, must answer for their actions, there will be found what supersedes creation itself, namely, Eternal Justice. It was the attribute of the Great God of Nature before worlds were; it will reside with him when they perish; and the earthly portion of it committed to your care, is now solemnly deposited in your hands by the Commons of England. My lords, I have done."

THE END.

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